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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. ~~1187~~ 237

LAR DALY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

and

FEDERAL COMMUNICATIONS COMMISSION,

Respondent-Intervenor.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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The Scheffer Press, Inc.—ANdover 3-6850

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Lar Daly respectfully prays that a writ of certiorari issue to review the final order of the United States Court of Appeals for the Seventh Circuit, entered in the above cause on April 2, 1957.

ORDER BELOW.

The order of the United States Court of Appeals for the Seventh Circuit is filed herewith in the Appendix* (App. pp. 27a-28a, 101a).

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* Filed and submitted herewith under separate cover.

JURISDICTION.

A final order of the Court of Appeals for the Seventh Circuit, dismissing the cause of action, was entered on March 7, 1957. A petition for rehearing was denied on April 2, 1957. The jurisdiction of this Court is invoked pursuant to Public Law 901, 5 U.S.C., Section 10 (1040), according to the provisions of 28 U.S.C., Sup. III, #1254 (1). Jurisdiction of the Court of Appeals was invoked pursuant to Public Law 901, 5 U.S.C., Section 4 (5 U.S.C. 1034), according to the provisions of the Communications Act, 47 U.S.C., 402(a).

QUESTION PRESENTED.

Whether the Court of Appeals erred in granting Respondents' Motion to Dismiss on grounds that "Petitioner has alleged no justiciable case or controversy and the case is accordingly moot."

Articles of the Federal Constitution and Amendments thereto, Federal Statute, and Rules and Regulations of the Commission involved.[1]

1. FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED.

Amendment (Article X) of the Bill of Rights to the U. S. Constitution, which reserves absolute right and supreme jurisdiction to the duly constituted authorities of the sovereign States of this Union, in respect to all matters pertaining to Elections, held within their state borders.

Article 1, Section 8, of the U. S. Constitution, wherein the Congress, or any of its created Federal Regulatory Agencies, is NOT specifically granted the power to defy, question, circumvent, or disregard, the certified act of a

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[1] "Commission" refers to the Federal Communications Commission.

State, in respect to any matter pertaining to an Election within a State's borders.

Article 1, Section 10, of the U. S. Constitution, wherein the power of a State to be supreme in all matters pertaining to Elections within its state borders, is NOT specifically forbidden.

Article Three, Section 2, paragraph B, of the U. S. Constitution, which gives the U. S. Supreme Court the right to review, both as to law And To Fact, the decisions of the lesser court in which this case must have originated.

Article Four, Section 1, of the U. S. Constitution, which states that the public acts and records of each state are to be recognized as valid in every other state, and consequently by the Federal Government and all its agencies, which owes its very establishment and entity and derives its sovereignty, within Constitutional limits, from the freely delegated powers of 12 of the original 13 States of this American Union.

Article Six, paragraphs B and C, of the U. S. Constitution, which states that the Constitution, and the laws made as the result of it, are to be the supreme laws of the United States; and that all Federal and State governmental and judicial officers, which includes the officers of quasi-judicial Federal Regulatory Agencies, must be bound by oath or affirmation to support the Constitution of the United States.

Amendment (Article V) of the Bill of Rights to the U. S. Constitution, which states in part as follows: "nor (shall a person) be deprived of life, liberty, or property, without due process of law". The word "property" as used therein can logically be construed as meaning an intangible right, such as the legal right to the status of

being declared and accepted as a legally qualified candidate for public office, as well as the tangible right of owning a house, real estate, or other personal property. Further, a person cannot be deprived of such property without a fair hearing or a court trial.

2. FEDERAL STATUTE INVOLVED.

Section 315 of the Communications Act of 1934, as amended, which provides:

> (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station; Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.
>
> (b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.
>
> (c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

3. COMMISSION RULES AND REGULATIONS INVOLVED.

Commission Public Notice Primer of September 8, 1954 (FCC 54-1155-9105), entitled "Use of Broadcast Facilities by Candidates for Public Office." Page 1, Column 3, of said Public Notice Primer specifies in detail the Commission definition of what it considers a "legally qualified candidate" to mean. (Appendix, p. 67a.)

Page 2, Column 3, IV, Question and Answer No. 10, of the same Public Notice Primer, states as follows: "Who Is a Legally Qualified Candidate?"

10. Question—How can a station know which candidates are legally qualified?

Answer—The determination as to who is a legally qualified candidate for a particular public office within the meaning of Section 315 and the Commission's rules must be determined *by reference to the law of the State in which the Election is being held.* In general, a candidate is legally qualified if he can be voted for in the state or district in which the election is being held, and, if elected, is eligible to serve in the office in question. (Appendix, p. 67a) (Italics Petitioner's.)

Index to certified Record, filed by the Commission with the Court of Appeals on February 5, 1957, attached hereto and referred to as Appen. Index.

Petitioner submits said Index to Record as a factual and concise chronology of his case before the Commission, previous to the time action was brought in the Court of Appeals on December 28, 1956, with the filing of his Petition for Review. The following Item Nos. are particularly cited for the Court's consideration:

On page 1 of Index to Record .....Item No. 6

On page 2 of Index to Record.....Items No. 14, 16, 18, 23

On page 3 of Index to Record.....Items No. 37, 3, 4, 5

On page 4 of Index to Record....Items No. 7, 8, 12, 14, 20

On page 5 of Index to Record....Items No. 23, 36, 39, 40

On page 6 of Index to Record.....Item No. 52

STATEMENT.

I - VIII.

The Fact of Petitioner Having Been A "Legally Qualified Candidate"; The Commission Having Knowledge of Same; And The Commission Being In Error In Denying Petitioner's Request To Be Declared A "Legally Qualified Candidate", Cannot Now Be Denied.

The fact of Petitioner having been a "legally qualified candidate", according to the laws of the States of Illinois, Indiana, and Montana; and according to the Rules and Regulations of the Commission itself, from the dates of February 8 to August 22, 1956, inclusive, obviously cannot now be denied. Attached as exhibits to his Petition for Review, and made a part thereof, were authentic copies of his certification as a "legally qualified candidate", by the duly constituted authorities of the States of Illinois, Indiana, and Montana. (Appendix, pp. 12a-16a)

II.

The fact of the Commission having knowledge of Petitioner's being a legally qualified candidate, according to the applicable laws of the States of Illinois, Indiana, and Montana; and according to its own Rules and Regulations, obviously cannot now be denied.

(a) The Commission knew on or about the 14th of March, 1956, of a letter from the Illinois Secretary of State to Petitioner, dated February 24, 1956, which stated, in effect, that Petitioner remained a "legally qualified candidate" in Illinois, from the date of his certification on February 8, 1956; and that nothing he may do of his own volition, after February 8, 1956, could decertify him from the status of being a "legally qualified candidate." (Appen. Index, p. 36, Item 14, R. 35)[1]

[1] "R" refers to Record filed with Court of Appeals.

(b) The Commission definitely knew of the above letter on April 4, 1956, when Petitioner included the original of same in his Informal Complaint to the Commission. (Appen. Index, p. 35, Item 1, R. 1-5)

(c) The Commission definitely knew of Petitioner's retention of his status as a "legally qualified candidate" in Illinois, from the letter it received from the Illinois Secretary of State, dated April 9, 1956, in response to the Commission's telegram of April 5, 1956. (Appen. Index, p. 39, Items 7, 14, R. 90, 97-98)

(d) Petitioner, on March 29, 1957, served the Commission with a copy of an Emergency Motion, filed with the Court of Appeals on that date, which contained a copy of a certified Affidavit, given to Petitioner by the Illinois Secretary of State on March 28, 1957, which stated in effect that Petitioner was certified as a "legally qualified candidate" on February 8, 1956, and that he continued as such and remained a legally qualified candidate, up to and including the date of the Illinois Presidential Primary Election on April 10, 1956. (Appendix, 98a-100a)

(e) The Commission definitely knew on April 6, 1956, that Petitioner was a "legally qualified candidate" in the State of Indiana, for the Indiana Presidential Primary Election of May 8, 1956. On April 5, 1956, the Commission sent the following telegram to the Indiana Secretary of State:

> "Secretary of State, Indianapolis, Ind. Wash D.C. Apr 6 AM 1:00 Request has been received from Lar Daly for consideration as a legally qualified candidate for Republican nomination for the office of President under the provisions of Section 315 of the Communications Act of 1934 as amended, 47 U.S.C. Please let us know if Lar Daly is such a candidate in your state."
>
> (Signed) Mary Jane Morris, Secretary, Federal Communications Commission. (Appen. Index, p. 39, Item 8, R. 91)

On April 6, 1956, the Indiana Secretary of State replied as follows:

> "Mary Jane Morris, FCC, Washington, D.C. Indianapolis, Ind., April 6, 1956. Lar Daly has filed his declaration as a Republican candidate for President of the U. S. His name will appear on the official ballot in May 8 Primary election. (Signed) Crawford F. Parker, Secretary of State of Indiana. (Appendix 44a)

(f) On April 25, 1956, Petitioner was notified by letter from the Montana Secretary of State that he would be certified at the proper time, as a legally qualified candidate for the June 5, 1956, Montana Presidential Primary Election. Petitioner was so certified in Montana on May 2, 1956, the day before the Commission on May 3, 1956, denied his request for rehearing of the Commission's original Directive against him, made on April 11, 1956. (Appendix 75a)

III.

The fact of the Commission having erred in its original ruling against Petitioner, *i.e.*, "that he was not a legally qualified candidate", made on April 11, 1956; and its subsequent repetition of the same error, made on October 31, 1956, both rulings being predicated on the same and inseparable cause of action, cannot now be in dispute.

IV.

(a) Petitioner believes that a conspiracy existed between the Commission and the 4 major Television and Radio networks to deny him the free and equal time due under Federal Law. The 4 networks in question are: National Broadcasting Co., Columbia Broadcasting System, American Broadcasting Co.,

and Mutual Broadcasting System, all with General Offices in the City of New York, N. Y.

(b) Petitioner believes that the principal reason for the Commission and the networks denying him the free and equal air time, was because they did not want the mass of the American people to hear what Petitioner had to say as a candidate for President of the United States.

(c) It is generally known that Petitioner publicly and consistently espouses a political doctrine known as, "America's Interests First in Politics." The tenets of this doctrine are greatly at variance with those held by certain elements who are extremely influential in the television and radio industry.

(d) It is pertinent to Petitioner's belief, stated above, that Section 315 of the Communications Act, and the Rules and Regulations of the Commission, prohibits any censorship of what Petitioner might say, if he had been granted the free and equal television and radio time.

V.

(a) Petitioner believes that the Commission is actually controlled by the 4 networks; whenever the networks desire to exercise such control. The shocking disclosures made by the Chairman of the Commission to a U. S. House of Representatives sub-Committee on Small Business, headed by Congressman Joe Evins (D-Tenn), on March 21, 1956, is hardly credible of belief in a free and representative Republic. (Appendix 69a)

(b) On June 9, 1957, the anti-Trust sub-Committee of the House of Representatives Judiciary Committee, made public its official Report, dated March 13, 1957, on the relationship between the Commission and the major Television and Radio networks. The Commission is supposed to regulate the networks in the best interests of all the American people, as intended and directed by the Congress of the United States. Reproduced below is the Frontspiece of said Report, and on pages 144 and 145 is stated, in part, the following:

> (2) *FCC practices and policies.*—In testimony before the committee on this NBC-Westinghouse matter as well as in testimony and documentary evidence submitted on other subjects, references were made to informal private conferences and discussions between FCC Commissioners and representatives of industry, some of whom were directly interested in problems pending before the Commission. The evidence demonstrates that for at least the past 10 years an air of informality has surrounded cases pending before the Commission. This has permeated the Commission's administrative process to a point where various members of the Commission without reluctance have, during the past decade, repeatedly discussed with one or more interested parties the merits of pending cases—even going so far as to indicate how particular Commissioners would vote.
>
> This practice, insofar as it relates to pending adjudications, is repugnant to fundamental principles of quasi-judicial procedure.[9] The committee recognizes the need for some informality in certain phases of the Commission's work, but where conflicting rights or claims of parties are being adjudicated, informal ex parte discussion between a Commissioner and a litigant or his representative treads dangerously close to, if it does not transgress, the outer limits of due process of law.

[9] It may also be a violation of section 409 of the Act. 47 U.S.C., sec. 409 (c) (1952).

> Accordingly, the committee believes it imperative that the Commission adopt without delay a code of ethics that would proscribe conduct of this kind by Commissioners and their staff and by attorneys and other representatives of industry alike. Such a code, like one already adopted by the Civil Aeronautics Board, should make clear and definite the line separating permissible from nonpermissible informal contacts between Commission personnel and parties. It should remove any doubt that now may exist concerning the impropriety of private communications with members of the agency concerning adjudicatory matters.

The above sections of the anti-Trust sub-Committee's Report is particularly appropriate to the Commission's seeking and being influenced by the opinions of the 4 networks, in respect to Petitioner's appeal to the Commission that he be declared a "legally qualified candidate", and granted the free and equal time due him, according to Section 315 of the Communications Act.

VI.

On April 5, 1956, the Commission sent identical letters to the 4 networks, asking their opinions on Petitioner's request that he be declared a "legally qualified candidate", and that the Commission order the networks to grant him the free and equal time as required by law. (Appen. Index, p. 38, Item 3, R. 86, p. 39, Items 4, 5, 6, R. 87, 88, 89)

Replies were received from the 4 networks between the dates of April 9-11, 1956, inclusive. Naturally, the networks' replies were favorable to their own position in the

matter, and, in reality, were nothing more than a repetition of the excuses given to Petitioner by the same 4 networks a few weeks previously. (Appen. Index, p. 40, Items 16, 17, 19, 22, R. 100, 101-101A, 112-117, 121-128)

On October 5, 1956, the Commission again sent identical letters to the 4 networks, asking for their comments on Petitioner's Complaint to the Commission, filed on October 2, 1956. Replies were received from the 4 networks between the dates of October 15-19, 1956. As expected, the networks' replies were masterpieces of evasion in attempting to circumvent the undeniable fact of Petitioner's having been certified as a "legally qualified candidate", by the duly constituted authorities of the sovereign States of Illinois, Indiana, and Montana, on February 8, April 3, and May 2, 956, respectively. (Appen. Index, p. 41, Items 40, 41, 42, 43, R. 163, 164, 165, 166 — p. 42, Items 44, 45, 46, 47, R. 167-168, 169-175, 176-177, 178-179.

VII.

On April 11, 1956, the Commission issued its Directive against Petitioner, refusing to declare him a "legally qualified candidate." The Directive bore the title "By Order of the Commission", with a signature, presumably that of George C. McConnaughey, Chairman of the Commission. (Appendix 7a, 8a)

The Commission reached such decision despite all the overwhelming evidence, of documented facts before it, supplied by Petitioner. The contemptuous defiance of the inherent rights of the sovereign States of Illinois, Indiana, and Montana; and the incredible denial of the statutory rights of an American citizen, is impossible of belief but for the fact of being an obvious reality.

On April 14, 1956, Petitioner, in a telegram to the Commission, pleaded for at least a chance to appear before the Commission personally, and thus be heard in his own behalf. To grant such appeal, was the very least the Commission should have done to preserve some semblance of justice and fair play in the matter. (Appen. Index, p. 40, Item 23, R. 129)

On May 3, 1956, an Assistant Secretary of the Commission, by telegram, refused Petitioner's request. (Appen. Index, p. 41, Item 36, R. 142)

On October 31, 1956, the Commission again issued a Directive against Petitioner, denying his October 3, 1956 request, in a Formal Complaint, that he be declared a "legally qualified candidate." The Commission, flagrantly disregarding the paramount issue of basic justice in the matter, ruled that Petitioner's cause was now moot, and as the nominee of the 1956 Republican National Convention had already been selected, the relief requested by Petitioner could not then be granted. (Appendix 9a-12a)

VIII.

In its October 31, 1956 ruling against Petitioner, the Commission held that there WAS a time limit as to when the "free and equal" television and radio time sought by Petitioner could be made available. In respect to such interpretation of its own Rules and Regulations by the Commission, Petitioner cites Question and Answer No. 33, of the Public Notice Primer, dated September 8, 1954, heretofore mentioned, of the Commission itself, regarding its own Rules and Regulations. (Appendix 67a) On page 4, column 1, of said Commission Public Notice Primer is stated, in part:

> 33. "Question—If a candidate secures time under section 315, must he talk about a subject directly related to his candidacy?"

Answer—No. The candidate may use the time as he deems best. To deny a person time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by section 315 (WMCA, Inc. R.R. 1132)"

In the light of the clearly expressed intent and meaning of Answer 33, Petitioner points out the fallacy, and lack of logic and common sense in the Commission's dictum to Petitioner, that "free and equal television and radio time," due, of right, to a "legally qualified candidate," DOES HAVE a definite time limit as to its availability for use by the candidate.

The Major Premise advanced in Answer 33 is as follows: Admittedly, in justice, law, and of right, the "free and equal time" must be given to the "legally qualified candidate", assuming that the Television and Radio networks are still engaged in the telecasting and broadcasting business, and their physical properties and facilities are still in a suitable condition for the proper use of same.

The Minor Premise would then logically be as follows: That by using the time, the candidate does NOT necessarily have to possess the intention in his own mind, nor need he declare, imply, or infer publicly, in any manner whatsoever, that the purpose in his using the time is to further his candidacy politically, with the eventual objective being victory in the election in which he is a candidate.

If both the Major and Minor premises are true, then to hold, as does the Commission, that there is a definite terminal date on the time rightfully due the candidate, is a contradiction in terms. Why set a time limit on a right which the Commssion admits the candidate may use for practically any purpose whatsoever, which right the Commis-

sion definitively declares need have no connection whatsoever with the candidacy of the "legally qualified candidate."

In logic and common sense, only one reasonable interpretation can be deduced from the language in Answer 33. It is, to preclude and forestall the possibility of the networks, or any television or radio station, from deliberately evading its obligation of providing the "free and equal time" to a "legally qualified candidate", by stalling and delaying the issue through administrative, judicial or any other means, until the date of the election in which the candidate is a contender, has passed, and then saying to all and sundry, "well, the election is over with now; the candidate who might have been entitled to time was defeated, the "free and equal time" cannot now do his past candidacy any possible good; so we will just forget about it and not even consider giving him the time now."

An examination of the Record and other pertinent documents in the case would show that such is what happened to Petitioner in this matter.

IX.

Sections Of The Communications Act Relevant To Petitioner's Case.

Section 4, paragraph j, on page 8 of the Communications Act states in part as follows:

> "Any party may appear before the Commission and be heard in person or by attorney."

Comment—Petitioner was denied that right, despite three separate appeals made by long-distance telephone, letter, and telegram. (Appen. Index, p. 39, Items 11, 15, R. R4, 99 — p. 41, Item 36, R. 142)

Section 409(b), on page 67 of the Communications Act, states in part as follows:

> "In all such cases the Commission shall permit the filing of exceptions to such initial decision by any party to the proceeding and shall, upon request, *hear oral argument* on such exceptions before the entry of any final decision, order, or requirement."

Comment—Petitioner pleaded desperately with the Commission for oral argument on his case, as the only fair and sensible method of arriving at the true facts. His appeals for oral argument were summarily denied.

Section 409, paragraph c, (3) page 68 of the Communications Act, states in part as follows:

> "No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings."

Comment—In Petitioner's case, the Commission, apparently through the actions of its Staff members, not only consulted directly with the 4 major Television and Radio networks concerned, which practice was forcefully denounced by the Report of the anti-Trust sub-Committee of the House of Representatives Judiciary Committee, made public on June 9, 1957; but, in view of the revelations contained in the hearings before sub-Committee No. 1 of the U. S. House of Representatives Select Committee on Small Business, held on March 21, 1956, was definitely influenced by the 4 networks in the matter, and apparently told by the networks representatives to issue its April 11

and October 31, 1956, Directives against Petitioner, which resulted, unjustly and illegally, in Petitioner being denied the status of a "legally qualified candidate" by the Commission.

X.

Comments On Section 315 Of The Communications Act.

Section 315 of the Act is commonly known as the "Politicians Section." It comprises about 130 words in its entirety out of an approximate total of 32,000 words in the Act itself. Ordinarily, matters pertaining to Section 315 occur only every 4 years, during the year in which a President of the United States is being nominated and elected.

It is incredible of belief that the Commission should attach so little importance to the office of President, that it would not conduct public hearings attended by the Chairman and the other 6 Commissioners, when a dispute arises as to a citizen's legal qualifications as a candidate for President of the United States. There were 3 certified "legally qualified candidates" for President, in Illinois, on the Republican ballot, for the April 10, 1956 Presidential Primary Election, *viz.*, Dwight D. Eisenhower, William F. Knowland, and Lar (America First) Daly (Petitioner).

Admittedly, the first two are what is known in politics as "heavyweights", one being President of the United States, and the other a U. S. Senator from California and Minority Leader of his party in the United States Senate. Admitted, also, is the fact that the third candidate (Petitioner) was a "lightweight" in the vernacular of politics.

The first candidate (Dwight D. Eisenhower) was given free television and radio time, by the 4 networks, on Feb-

ruary 29, 1956, in which address the Commission publicly stated that Dwight D. Eisenhower was speaking as a political candidate, announcing his intention of seeking the 1956 Republican Presidential nomination, God willing, and his health permitting.

On March 1, 1956, in newspaper wire service reports appearing in practically every newspaper in the country, an "authorized spokesman" for the Commission stated that "only qualified Republican candidates for the 1956 Republican Presidential nomination were entitled to free and equal time to reply to Dwight D. Eisenhower, and that, *so far as he knew*, only William F. Knowland could claim the time."

Obviously, the "authorized spokesman" for the Commission did not know of the third "legally qualified candidate" in Illinois (Petitioner), who had been certified, along with Dwight D. Eisenhower and William F. Knowland, by the Illinois State Electoral Board, on February 8, 1956, in Springfield, Illinois.

If William F. Knowland, a "heavyweight" candidate, had done exactly the same things, and engaged in the same actions as Petitioner, a "lightweight" candidate during the Illinois 1956 Primary campaign, would the 4 networks have dared to refuse William F. Knowland the "free and equal time" when he requested it on March 4, 1956, from the network Presidents; and would the Commission have dared to refuse to declare William F. Knowland a "legally qualified candidate", and not order the 4 networks to give him the time?

Common sense answers that the 4 networks and the Commission would not have tried to deny William F. Knowland his legal rights as an American citizen. They did, however, deny the same rights to Petitioner, simply

because they considered him a "little-guy" and a "nobody" in politics, and thus would not be expected to command any political influence in his fight to secure those rights from the 4 networks and the Commission.

XI.

Petitioner's Telephone Talks With 6 Of The Commission's Members.

On April 16-19, 1956, the annual Convention of the National Association of Radio and Television Broadcasters was held in Chicago, Ill., at the Conrad Hilton Hotel. This is the most important yearly gathering of all the influential persons connected with the television and radio industry. The Chairman, and the other six members of the Commission, try to attend this Convention, if at all possible. In 1956, the Chairman and all 6 members of the Commission did attend.

On April 17 of 18, 1956, Petitioner spoke with 6 of the Commissioners personally, by house telephone, in the Conrad Hilton Hotel. This was 6 days after April 11, 1956, the date on which the Commission issued its first Directive against Petitioner, and 13 days after April 4, 1956, the date on which the Commission received Petitioner's personal appeal by letter to George C. McConnaughey, Chairman of the Commission.

All six members of the Commission told Petitioner on the telephone that they *had never even heard of his case before the Commission.* Two of the Commissioners were sympathetic to Petitioner's request, that he at least be allowed to appear before the full Commission personally, and plead his case as to being a "legally qualified candidate", in his own behalf. The other four Commissioners told Petitioner on the telephone that his case was prob-

ably being handled by the Staff of the Commission, and that they could not do anything to help him.

Petitioner made at least 25 telephone calls trying to reach Commission Chairman George C. McConnaughey personally, both to his suite in the Conrad Hilton Hotel, and his son's suite in the Ambassador East Hotel, Chicago. Petitioner knows for a fact that Chairman McConnaughey was often in the room when Petitioner phoned, but the usual answer to Petitioner by the party answering was that "Mr. McConnaughey is not in." It was obvious that Chairman McConnaughey did not want to talk to Petitioner about his case under any circumstances. All of the above telephone calls to the 6 members of the Commission, and the numerous attempts to reach Chairman McConnaughey, were made by Petitioner in the presence of at least 2 witnesses at all times.

XII.

Personal Talks Between Petitioner And His Attorney With General Counsels Of The Two Largest Networks In New York City.

In mid-July, 1956, Petitioner and his attorney visited New York City and personally talked with the General Counsels of the two largest networks. One of the General Counsels inferred that he was sympathetic to Petitioner's claim of being entitled to the "free and equal time", but that the final decision rested with the highest authorities of his network.

The General Counsel of the other network told Petitioner and his attorney to their faces, in the presence of one of his assistant counsels, that Petitioner did not have a possible chance of winning the 1956 Republican Presidential nomination; and that Petitioner had no possible chance of even having his name placed in nomination by a Delegate to the Convention.

When Petitioner and his attorney vigorously protested the flagrant "subjective determination" being employed by the General Counsel in the matter, which is expressly forbidden by the Rules and Regulations of the Commission, according to Question and Answer No. 12 of the Public Notice Primer of September 8, 1954, the General Counsel merely shrugged his shoulders and made no comment.

XIII.

When the Commission Should Have Declared Petitioner A "Legally Qualified Candidate", Forthwith, According to Its Own Rules and Regulations.

(A) On the day in mid-March, 1956, when the Commission knew of the letter from the Illinois Secretary of State to Petitioner, dated February 24, 1956, which stated, in clear and concise terms, the reasons why Petitioner must remain as a "legally qualified candidate" in Illinois, after the date of his certification by the Illinois State Electoral Board on February 8, 1956.

(B) On April 4, 1956, when the Commission was provided with the original of the above letter from the Illinois Secretary of State to Petitioner.

(C) On April 6, 1956, when the Commission received the telegram from the Indiana Secretary of State, in answer to its April 5, 1956 telegraphic request, which stated definitely, in clear and concise language, that Petitioner was a "legally qualified candidate" for President of the United States, on the Republican ballot, for the May 8, 1956, Indiana Presidential Primary Election.

(D) On May 9, 1956, when the Commission received the letter of reply from the Illinois Secretary of State, in response to its April 5, 1956 telegraphic request, which stated that Petitioner's name would remain on the Illinois

Republican ballot as a candidate for President of the United States, for the April 10, 1956 Presidental Primary Election in Illinois.

XIV.

No Justification for Commission's Doubts On and After April 6, 1956.

Any doubts the Commission may have had regarding Petitioner's Illinois certification of February 8, 1956, after receiving Petitioner's first appeal on April 4, 1956, became irrelevant and immaterial for all practical purposes when the Commission received the telegram from the Indiana Secretary of State on April 6, 1956, which confirmed Petitioner's status as a "legally qualified candidate" in Indiana to the Commission.

The Commission should not have even waited for the Illinois reply to its April 5, 1956 telegram to the Illinois Secretary of State. Question and Answer No. 25 of the Commission's Public Notice Primer of September 28, 1954, reads as follows: (Appendix 67a)

> "25. Question—If the candidate has received free time for a period of time and, subsequently, a second candidate announces his candidacy, is the second candidate entitled to equal facilities retroactive to the date when the first candidate announced his candidacy?
>
> Answer—Normally yes. Once the station has made time available to one qualified candidate, its obligation to provide equal facilities to future candidates begins. A candidate cannot, however, delay his request for time and expect to use the "equal opportunities" provision to force a station to turn over most of the last few pre-election days to him in order to "saturate" pre-election broadcast time. (Letter to Congressman Hunter, dated May 28, 1952; Letter to Congressman Frelinghuysen, dated March 2, 1954)."

Petitioner points out that he definitely was not a "future" candidate, as described above, in Answer 25. He was the first publicly announced 1956 Republican Presidential candidate in the country, according to nation-wide newspaper stories. His Illinois Presidential petitions were printed in August, 1955, and placed in the U. S. Mails for circulation throughout all 102 Counties in Illinois during August 1955, besides being circulated personally at that time. He appeared personally before thousands of people at the Illinois State Fair in Springfield, Illinois, on Governor's Day, in August 1955, attired in his "Uncle Sam" campaign costume, and passed out over 5000 of his campaign cards boosting his candidacy for the 1956 Republican Presidential nomination and, on January 23, 1956, he personally filed his Petition as a Republican candidate for President, for the April 10, 1956 Primary Election, with the Illinois Secretary of State, in Springfield, Illinois. This personal filing resulted in nation-wide newspaper, television, and radio publicity for Petitioner, in practically all daily American newspapers, on January 24 and 25, 1956.

From a viewpoint of logic and common-sense, it is ironic to think that the other two "legally qualified candidates" in Illinois, Dwight D. Eisenhower and William F. Knowland, did absolutely nothing to actively promote their filing in Illinois. Actually, their Presidential petitions were printed, circulated, and filed with the Illinois Secretary of State, not by themselves, but by persons who *did not have* the express consent of Dwight D. Eisenhower or William F. Knowland.

REASONS FOR GRANTING THE WRIT.

The Commission, in its Motion to Dismiss Petitioner's Petition for Review, bases its argument on two principal grounds, *viz.*:

1. That the issue is moot, and therefore, Petitioner has no justiciable case or controversy. (Appendix 16a, 17a)

2. That the gravamen of the Petition for Review is the same as that asked of the Commission in Petitioner's Formal Complaint of October 2, 1956, i.e., the "demand for free and equal" television and radio time from the 4 networks.

I.

Constitutional Supremacy of the States in All Election Matters.

(a) In answer to the first ground of the Commission's argument, Petitioner states: There most certainly is an "actual controversy", presently in existence in this case, so as to preclude its being a "moot" question, because there is a present and actual dispute existing between the two parties which affects one of the parties' legal rights. Petitioner and the Commission are in a genuine controversy, and in an adversary position to each other, which can best be stated by the following question:

> *"In the future, are the opinions of private commercial concerns (the 4 networks), or the administrative fiats of a Federal regulatory agency (the Commission) to take precedence over the official acts of the duly constituted authorities of the sovereign states of this Union, especially in matters pertaining to elections held within a state's borders, such as the right to determine and decide who is, and who is not, a legally qualified candidate for public office?"*

(b) If such private commercial opinions and Federal administrative fiats are to be the determining and decisive factor, then the presumed Constitutional rights of the sovereign States of this Union are a joke, and it would be best in all honesty and for all practical purposes, to immediately declare Article X of the Federal Bill of Rights to be null and void, and abolish it entirely.

(c) It is a generally accepted principle of American law that the sovereign States of this Union are supreme in all matters pertaining to elections held within their state borders, and Petitioner knows of no instance when that right has ever been successfully challenged and annulled. The following cases are cited as relevant to the supremacy of the States in *all* matters pertaining to elections, held within a State's borders:

1. "The election of a President is wholly in the power of the States and cannot be taken away or abdicated." *McPherson* vs. *Blacker* (1892) 146 U.S. 1.

2. "General Government can claim no powers which are not granted by the Constitution." *Martin* v. *Hunter's Lessee* (1816), 1 Wheaton 304.

3. "Where language of the Constitution is clear, no place for explanation, addition, or subtraction." *U. S.* v. *Missouri Pacific* (1929), 278 U.S. 269.

4. "The origin, relation, and functions of the Federal Government and States, clearly stated by Chief Justice Marshall." *Barron* v. *Baltimore* (1833) 7 Peters 243.

5. "Why State powers are not enumerated in the Constitution". Chief Justice Marshall in *Sturges* v. *Crowninshield* (1819), 4 Wheaton 122.

The Commission's contemptuous defiance of the inherent rights of the sovereign States, and its callous disregard for the Constitutional right of due process of law to an American citizen, in this matter, would be impossible of belief if they were not already an established fact.

"Due Process of law is guaranteed against the Federal Government by the Fifth Amendment, and against the States by the Fourteenth Amendment, in the Bill of Rights." *Davidson* v. *New Orleans* (1877), 96 U.S. 97.

II.

The Great Interests of a Public Character Asserted Are a Continuing One.

The "actual controversy" at issue in this case is not only of extreme importance to Petitioner personally, in view of the fact that he may again, at some time in the future, be a candidate for President of the United States, but also, it affects the interests and rights of all other American citizens who may be candidates for public office in the future.

This controversy is one of the most important questions concerned with American politics today. Petitioner, and all other future candidates for public office, must know now, whether, as a candidate for public office, he is to be guided by the Election Laws of the State in which he files for office, or whether he is to base his hopes as to being considered a "legally qualified candidate" on what the masters of the television and radio industry think about his political philosophy, and expect to have that private commercial opinion confirmed by a servile and innocuous Federal Communications Commission, which admittedly, by the public testimony of its own Chairman, is not the master of its own house.

III.

Precedent May Be Established By This Case.

Petitioner believes that this case, concerned with Section 315 of the Communications Act and filed under Public Law 901, is the first of its kind to reach the United States Supreme Court.

IV.

Why This Case Is Not Moot And The Declaratory Judgment Can Be Granted.

The Declaratory Judgment asked of the Court of Appeals in the 5 points of Petitioner's Petition for Review, can be granted under the powers of the Federal Declaratory Judgment Act. The following cases are cited to support Petitioner's argument:

The Supreme Court of the United States in 1937 in *Aetna Life Insurance Company* v. *Haworth*, 300 U.S. 227, 81 L. Ed. 617, 57 S. Ct. 461, with Mr. Chief Justice Hughes as the organ of the Court, significantly stated that:

> "In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish. . . . Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies. The judiciary clause of the Constitution 'did not crystallize into changeless form the procedure of 1789 as the only possible means for presenting a case or controversy otherwise cognizable by the federal courts.' . . . In dealing with methods within its sphere of remedial action the Congress may create and improve as well as abolish or restrict. The The Declaratory Judgment Act must be deemed to fall within this ambit of congressional power, so far as it authorizes relief which is consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the judicial power extends . . . the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages . . . And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations

that irreparable injury is threatened are not required. . . . It is the nature of the controversy, not the method of its presentation or the particular party who presents it, that is determinative."

300 U.S. 227, 240, 241, 244;
81 L. Ed. 617, 621-623.
57 S. Ct. 461, 463-465.

Judicial Interpretations Of The Term "Moot".

The Supreme Court of Colorado in 1936 in *Van De Vegt* v. *Board of Commissioners of Larimer County*, 98 Col. 161, 177, 55 P. 2d 703, 710, declared that: "A case is not moot where interests of a public character are asserted under conditions that may be . . . repeated . . . The problem here is of prime public concern and a continuing one. We are not warranted in relegating the parties to the condition which would result from withholding determination."

The Supreme Court of Oklahoma in 1947 in *Peppers Refining Company* v. *Corporation Commission*, 198 Okl. 451-453, 179 P. 2d 899, 901, quoted with approval the foregoing statement from the opinion in the *Van De Vegt* case.

The District Court of Appeal for the First Appellate District of California in 1937 in *United Press Associations* v. *Stockton Independent Publishing Company*, 19 Cal. App. 2d 432, 433, 65 P. 2d 893, 894, stated that:

> "The questions involved on this appeal are not mere moot and academic questions, but are questions of great practical importance to the parties. Despite the dismissal of the action in the trial court, the question of the rights and liabilities of the parties . . . still remains the subject of controversy."

The Appellate Court of Illinois in 1944 in *Appeal of Frank Foundries Corporation*, 323 Ill. App. 594, 600, 56

N. E. 2d 649, 652, declared that: " . . . if a substantial issue or question remains in the case, the cause is not moot."

The Court of Appeals of Ohio in 1948 in *Culver* v. *City of Warren*, 84 Ohio App. 373, 391, 392, 396, 83 N. E. 2d 82, 90, 92, stated that:

> "A determination of this suit and a dismissal of the appeal on the ground that the question is now moot would undoubtedly lead once again to the same method and pattern of exclusion and the process of discrimination could again be set in motion. If another suit were commenced it is easily conceivable and quite probable that by the time it would again reach a reviewing court it would again be argued that the matter was moot for the same reasons and on the same grounds . . . In the instant case there are interests of a public character . . . under conditions that may be . . . repeated. As we have heretofore observed, a pattern of governmental discrimination . . . has been set by the . . . authorities and the plaintiffs are entitled to a declaratory judgment so that there may not be a repetition of such conduct."

The Supreme Court of Mississippi in 1946 in *California Company* v. *State Oil and Gas Board*, 200 Miss. 824, 845, 27 So. 2d 542, 547, declared that:

> "It is next contended that the decision of the Circuit Court dismissing the appeal should be affirmed at all events by this Court on the alleged ground that the issue as to whether or not the appellee T. F. Hodge should be permitted to drill and operate an oil well at the location provided for in the granted exception has become moot, since the well has already been drilled and is now in operation. But we are unable to agree with this contention on account of the public interest involved herein."

The Supreme Court of Colorado in 1950 in *Reserve Life Insurance Company, Dallas, Texas* v. *Frankfather*, 123 Col. 77, 79, 225 P. 2d 1035, 1036, 39 A. L. R. 2d 146, 148, stated that:

> "There is no moot case or moot question where there are substantial rights or issues controverted in the case, and it is the duty of this court to review on writ of error any judgment of a trial court where substantial rights or issues are involved."

V.

Letters From Law Schools.

Petitioner submits the following letters from the Law Schools of Harvard, New York, and Northwestern Universities, in support of his contention that *he has* "alleged a justiciable case or controversy, and his case is accordingly not moot, nor the mere seeking of an advisory opinion upon an abstract question of law", as alleged by the Commission in its Motion to Dismiss Petitioner's Petition for Review, filed in the Court of Appeals on December 28, 1956.

Letterhead—Law School of Harvard University

May 17, 1957

Mr. Lar Daly
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly,

Your letter of May 14th has come to me.

The answer to your question, as you have put it, seems to me to be quite clear. If the question involved is really moot, and therefore academic, it would be the general rule of law that the petition should be dismissed. What constitutes mootness is a question,

and your understanding of that word may not be the same as mine. Also, I should say that where the petition is pending in a state court, this is a matter of state law, and the views of the several states may not always be the same.

The mere fact that an actual controversy was not one upon which a suit could presently be brought would not mean that the matter was moot or merely academic.

Very truly yours,
/s/ Erwin N. Griswold
Erwin N. Griswold
Dean

Letterhead—Northwestern University

May 24, 1957

Mr. Lar Daly, President
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

Dean Havighurst has referred to me your letter of May 14 requesting an opinion on the propriety of a dismissal of a petition for a declaratory judgment on the ground that the issue is moot and therefore academic.

As the Dean's letter to you indicates, it is impossible to supply a categorcial answer to your inquiry without a more detailed statement of the factual setting. The precise nature of the legal question and the occurrence which rendered it moot would be determinative. Since the federal authorities establish principles which vary in some respects from the Illinois law, the court in which the case was pending would have to be known.

For these reasons I regret that I cannot provide you with an answer. Without reference to your case, however, as a general proposition, a declaratory judgment can be granted only in cases of actual controversy, in which a present and actual dispute exists

between the parties and affects their legal rights. Mere abstract questions of law will not be answered. *On the other hand, it is not essential that the case be one in which the plaintiff could recover damages, obtain an injunction, or receive other relief of a coercive nature. No doubt it is this latter aspect of the declaratory remedy to which the lawyers you have consulted intended to refer.*

Yours very truly,
/s/ Harry B. Reese
Harry B. Reese
Professor of Law

HBR:dak

Letterhead—New York University School of Law

May 20, 1957

Mr. Lar Daly
American Stool and Chair Company
844 West Vermont
Chicago 43, Illinois

Dear Mr. Daly:

Dean Niles referred your letter of May 14 to me. It is my understanding that a complaint for a declaratory judgment can be and should be dismissed if the issues involved are moot or academic. That has been New York law and, I suspect, the law of most states, to the best of my knowledge. Our courts have said many times that they do not exist to decide academic questions. *As they have often remarked: the first requirement of a declaratory action is that a justiciable controversy be involved—that is, a genuine controversy between parties who are in an adversary position to each other.*

Yours very sincerely,
/s Herbert Peterfreund
Herbert Peterfreund
Professor of Law

HP:ms

VI.

Commission In Error On Alleged Gravamen In This Appeal Of Petitioner.

In answer to the second ground of the Commission's argument, Petitioner states:

(A) Nowhere in the 5 points of the Prayer for Relief of his Petition for Review, is the Court of Appeals asked to now order the Commission to direct the 4 networks to give him any "free and equal" television and radio time.

(B) The Court is merely asked to affirm the rights of the sovereign States to be supreme in all matters pertaining to elections held within their state borders; annul both Directives of the Commission against Petitioner as having been unjust and illegal in their entirety; and finally, issue a Declaratory Judgment that Petitioner was a "legally qualified candidate", between the dates of February 8 and August 22, 1956, inclusive, according to the applicable laws of the States of Illinois, Indiana, and Montana, and according to the Rules and Regulations of the Commission itself.

VII.

"Establish Justice".

The second stated purpose in the Preamble to the Constitution of the United States of America reads, "*ESTABLISH JUSTICE.*" Petitioner believes that this case is certainly one in which the meaning of those words should apply, and be put into practical effect.

VIII.

Aristotle's Immortal Dictum.

Aristotle, undeniably one of the greatest thinkers of all time, whose works have vastly influenced the shaping of

the political and social structure of Christian civilization, wrote in his Ethica Nicomachea, "ALL THAT IS UNFAIR IS UNLAWFUL, BUT NOT ALL THAT IS UNLAWFUL IS UNFAIR."

This immutable truism applies squarely to the central issue in Petitioner's case.

IX.

Equal Justice Under Law.

It seems more than mere coincidence that this appeal of Petitioner's is being read in the very building, upon the facade of which, chiseled in letters of stone, are the words constituting the heart and foundation of American jurisprudence, *viz.*: "EQUAL JUSTICE UNDER LAW", the only thing which Petitioner sought from the Commission in the first place.

CONCLUSION.

The final order of the Court of Appeals for the Seventh Circuit should be reversed and remanded.

Respectfully submitted,

Robert A. Kahn,
134 South La Salle Street,
Chicago, Illinois,
Attorney for Petitioner.

June, 1957.

APPENDIX.

In The United States Court of Appeals
For the Seventh Circuit
Chicago 10, Illinois

Lar Daly,
Petitioner,
v.
United States of America,
and
Federal Communications Commission,
Respondents.
Case No. 11946

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FILED
JUL 1 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. ~~1137~~ 237

LAR DALY,

Petitioner;

vs.

UNITED STATES OF AMERICA,

Respondent,

and

FEDERAL COMMUNICATIONS COMMISSION,

Respondent-Intervenor.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ROBERT A. KAHN
134 South LaSalle Street
Chicago, Illinois
Attorney for Petitioner

The Scheffer Press Inc.—ANdover 3-6850

APPENDIX.

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION OCTOBER 31, 1956, AGAINST PLAINTIFF.

(Filed Dec 28 1956)

NATURE OF THE PROCEEDINGS.

Comes now Petitioner Lar Daly, by his attorney, who states that he is an American citizen, sui juris, and resident of the United States of America for the past 44 years consecutively; that his present residence address is 844 West Vermont Street, in the City of Chicago, County of Cook and State of Illinois; that he was born in the City of Gary, County of Lake and State of Indiana; and declares to this Honorable Court:

1. That on February 8, 1956, he was duly certified by the Illinois State Electoral Board, in Springfield, Illinois, as a legally qualified candidate for President of the United States to all Illinois County Clerks, and that as a result of such certification:

(a) Petitioner's name did appear on the Illinois Republican ballot as a candidate for President of the United States for the Illinois Primary Election of April 10, 1956.

(b) That, consequently, Petitioner was voted for by the Illinois electorate directly.

(c) That Petitioner on April 4, 1956, in an Informal Complaint, by letter, registered mail, addressed to George C. McConnaughey, Chairman, Federal Communications Commission, Washington, D.C., made known to the Federal Communications Commission the fact of his Illinois certification as a legally qualified candidate.

2. That on April 3, 1956, Petitioner was duly certified by the Indiana Secretary of State, in Indianapolis, Indiana, as a legally qualified candidate for President of the United States to all Indiana Circuit Court Clerks, and that as a result of such certification:

(a) Petitioner's name did appear on the Indiana Republican ballot as a candidate for President of the United States, for the Indiana Primary Election of May 8, 1956.

(b) That, consequently, Petitioner was voted for by the Indiana electorate directly.

(c) That Petitioner, on April 4, 1956, in the same aforementioned Informal Complaint, by letter, registered mail, addressed to George C. McConnaughey, Chairman, Federal Communications Commission, Washington, D.C., made known to the Federal Communications Commission the fact of his Indiana certification as a legally qualified candidate.

3. That on April 4, 1956, in the aforementioned Informal Complaint, Petitioner requested the Federal Communications Commission to declare him a legally qualified candidate within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, in view of Petitioner's having already been certified by the duly constituted authorities of the sovereign States of Illinois and Indiana, as a legally qualified candidate for President of the United States; and in view of Petitioner having complied with the provisions of the Rules and Regulations of the Federal Communications Commission defining the meaning of a legally qualified candidate, as contained in "Public Notice, FCC 54-1155 9105, of September 8, 1954, entitled "Use Of Broadcast Facilities By Candidates For Public Office."

4. That on April 11, 1956, the Federal Communications Commission, for reasons completely irrelevant and imma-

terial to the facts at issue, and despite knowledge of Petitioner's prior certification as a legally qualified candidate by the duly constituted authorities of the sovereign States of Illinois and Indiana, did illegally and unjustly refuse Petitioner's request of April 4, 1956, that they declare him a legally qualified candidate within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, and thus denied all the rights guaranteed by law to a legally qualified candidate according to said Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47.

5. (a) That on October 3, 1956, Petitioner, availing himself of the "Resubmission 6 months rule" of the Rules and Regulations of the Federal Communications Commission, did file with said Federal Communications Commission by letter, registered mail, a Formal Complaint addressed to Mary Jane Morris, Secretary, Federal Communications Commission, Washington, D.C., requesting that the Federal Communications Commission forthwith declare him as having been a legally qualified candidate for President of the United States from February 8, 1956 to August 22, 1956 inclusive.

(b) That in said Formal Complaint of October 3, 1956, Petitioner made known to the Federal Communications Commission the fact that on May 2, 1956, Petitioner had also been duly certified by the Montana Secretary of State, in Helena, Montana, as a legally qualified candidate for President of the United States to all Montana County Clerks, and that as a result of such certification:

(1) Petitioner's name did appear on the Montana Republican ballot as a candidate for President of the United States for the Montana Primary Election of June 5, 1956.

(2) That, consequently, Petitioner was voted for by the Montana electorate directly.

(c) That in his Formal Complaint of October 3, 1956, Petitioner submitted much additional material supporting his Informal Complaint of April 4, 1956, wherein Petitioner requested the Federal Communications Commission to declare him a legally qualified candidate.

(d) That in his Formal Complaint of October 3, 1956, Petitioner primarily and emphatically sought to impress upon the Federal Communications Commission the fact that it is an accepted principle of Federal Constitutional Law that the sovereign states of this American Union are supreme in all matters pertaining to elections within their various state borders.

(e) That only the duly constituted authorities of the various sovereign states can declare who is, and who is not, a legally qualified candidate within their state borders.

(f) That when the duly constituted authority of a sovereign state does declare and certify a citizen to be a legally qualified candidate, such decision is sufficient, absolute, final, and non-arguable, and must be accepted and complied with by all agencies and individuals.

6. That on October 31, 1956, despite factual knowledge of Petitioner's having been previously certified as a legally qualified candidate by the duly constituted authorities of the sovereign States of Illinois, Indiana and Montana, on February 8, April 3 and May 2, 1956, respectively; and despite knowledge of Petitioner having in his possession authenticated copies of his certification as a legally qualified candidate by the aforementioned three sovereign states; and citing reasons completely irrelevant and immaterial to the facts at issue, the Federal Communications Commission did again deny Petitioner's request that he be declared a legally qualified candidate from February 8, 1956 to August 22, 1956, inclusive, within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, and in conformity with the

Rules and Regulations of the Federal Communications Commission pertaining to the definition of what constitutes a legally qualified candidate.

VENUE

Venue before this Court is established as permitted by Sec. 3 of Public Law 901, under which this action is being taken.

GROUNDS FOR RELIEF.

This action is brought under Sec. 402(a) of the Communications Act of 1934, as amended, U.S. Code 47, under an Act of Congress known as Public Law 901, December 29, 1950 (H.R. 5487), 31st Congress (1950-51), 2d Session, contained in "United States Statutes at Large", Vol. 64, Part 1 (Chapter 1189), Page 1129.

PRAYER FOR RELIEF.

Now, therefore, Petitioner having been declared and duly certified as a legally qualified candidate by the sufficient and competent authorities of the sovereign states of Illinois, Indiana and Montana, prays of this Court for the following relief:

1. A Special Finding by the Court that Petitioner's certification as a legally qualified candidate by the States of Illinois, Indiana and Montana, constituted conclusive evidence of the ultimate facts established, and should have been the primary determination for the Federal Communications Commission to employ in considering Petitioner's requests of April 4, 1956 and October 3, 1956, that he be declared a legally qualified candidate by the Federal Communications Commission within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47.

2. A General Finding by the Court that Petitioner was a legally qualified candidate from February 8, 1956 to August 22, 1956, inclusive, within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, as averred by Petitioner.

3. A Finding of Fact by the Court determining the validity of Petitioner's certification as a legally qualified candidate by the duly constituted authorities of the sovereign States of Illinois, Indiana and Montana, and therefore supportable in law and equity.

4. A Declaratory Judgment by this Court that the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner were unjustified and invalid in their entirety.

5. An Order, Ruling or Decree by this Court setting aside and suspending the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner; and directing the Federal Communications Commission to enter an order in accordance with the Declaratory Judgment of this Court.

Exhibits of Petitioner.

Petitioner attaches to this Petition for Review copies of the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner, as required by Sec. 4 of Public Law 901.

Petitioner attaches hereto photostatic copies of his certification as a legally qualified candidate, issued by the Illinois State Electoral Board, the Indiana Secretary of State, and the Montana Secretary of State, which are herewith incorporated and made a part of this Petition.

Respectfully submitted,

/s/ Lar Daly

Petitioner

Robert A. Kahn
Attorney for Appeliant
134 South La Salle Street
Chicago, Illinois
ANdover 3-2283

FEDERAL COMMUNICATIONS COMMISSION.
Washington 25, D.C.

April 11, 1956 In reply refer to 3000

Mr. Lar Daly
12022 South Halsted Street
Chicago 28, Illinois

Dear Sir:

This is with reference to your letter of April 2, 1956, in which you refer to the address made by the President on radio and television facilities on February 29, 1956, and request "equal opportunities" pursuant to Section 315 of the Communications Act of 1934 on the grounds that you are a "legally qualified candidate" for the nomination for President by the Republican Party. With your letter, you enclosed certain material which you felt supported your request. The Commission has communicated with the various networks concerning your request and has made certain independent inquiries with respect thereto.

As you know, Section 315(a) of the Act provides as follows:

> "(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed

upon any licensee to allow the use of its station by any such candidate."

From the above, it is clear that the provisions of Section 315(a) may be invoked only by a "person who is a legally qualified candidate" for public office. Where a question is raised concerning such qualifications, it is incumbent on the claimant to make a showing that he is a "legally qualified candidate".

The Commission has given careful consideration to your letter and to your enclosures. These documents indicate, among other things, that your statements and activities with respect to your candidacy are inconsistent; that although you qualified in Illinois to have your name on the ballot in that state's Republican Primary, you later advised the Illinois authorities that you were no longer a candidate; that although you admit taking such action, you later alleged that you did not really mean to withdraw; that while you claim that you are or will be qualified in states other than Illinois, in various ways including your stationery, you appear to support "Douglas MacArthur or U.S. Senator William E. Jenner of Indiana for President in 1956"; and that you apparently have also been bending your efforts toward obtaining the Republican nomination for Governor of Illinois. The above, and the other information contained in your letter and enclosures present an extremely confused picture as to whether or not you are, in fact, a candidate for the Republican nomination for President. Accordingly, the Commission is constrained to hold that you have failed to make an unequivocal showing sufficient to permit it to conclude that you are a "legally qualified candidate" within the meaning of Section 315(a) of the Communications Act.

By Direction of the Commission
(signed) George C. McConnaughey
George C. McConnaughey
Chairman

FEDERAL COMMUNICATIONS COMMISSION.
Washington 25, D.C.

October 31, 1956 37407

Mr. Lar Daly 8422
844 West Vermont Street .1000154
Chicago, Illinois

Dear Sir:

This is with reference to your "Complaint" filed on October 3, 1956 requesting the Commission to issue a "declaratory ruling" that you are a "legally qualified candidate" for the Republican Party nomination for President of the United States within the purview of Section 315 of the Communications Act of 1934, as amended, and to order the American Broadcasting Company, Columbia Broadcasting System, Inc., Mutual Broadcasting System, Inc., and the National Broadcasting Company to afford you the use of their facilities equal to that afforded to Dwight D. Eisenhower from February 29, 1956 to August 22, 1956, inclusive. Objections to your request have been filed by the four networks.

Commission records indicate that in a letter to the Commission dated April 2, 1956 you referred to the address made by President Eisenhower on February 29, 1956 over the facilities of the above-mentioned networks and stated, in substance, that you requested "equal opportunities" pursuant to the provisions of Section 315 of the Communications Act on the ground that you were a "legally qualified candidate" for the nomination for President by the Republican Party, and that said requests were refused. In its letter to you dated April 11, 1956, the Commission pointed out that the provisions of Section 315(a) of the Act may be invoked only by a "person who is a legally qualified candidate" for public office; and that where a question is raised concerning such qualifications, it is in-

cumbent on the claimant to make an unequivocal showing that he is a "legally qualified candidate." The Commission advised you that you had failed to make such a showing sufficient to permit it to conclude that you were a "legally qualified candidate" within the meaning of Section 315(a) of the Act. It further appears that in a telegram dated April 14, 1956 you requested the Commission to reconsider its action of April 11, 1956 and to grant you a "personal rehearing." By telegram dated May 3, 1956, the Commission advised you that, as a general policy, it does not ordinarily hold hearings on requests for "equal opportunities" under Section 315; and that you had submitted no new facts which would warrant the Commission to reconsider its action of April 11, 1956, or to deviate from said policy. You neither appealed from that action nor did you, at any time up to the date of your present compiaint, offer to the Commission any further showing of your candidacy.

In substance, you request a ruling that you are a legally qualified candidate for the Republican nomination for President and your prayer is that the Commission order the defendant networks to afford you the use of their facilities equivalent to that afforded Dwight D. Eisenhower in all instances beginning with the date of February 29, 1956, and including all such use afforded President Eisenhower up to and including the date of August 22, 1956. Your request is based upon allegations that you have in your possession authenticated documents from the Secretaries of State of Illinois, Indiana and Montana, certifying that you were a legally qualified candidate for the Republican presidential nomination; that you have evidence to show that you were officially recognized as such a candidate by the Republican National Committee; and that you actively solicited support of delegates to the 1956 Republican Convention. Your request is based also upon your

view that Section 315(a) of the Communications Act of 1934 is without limit as to time, that is, that you as a candidate for the Republican nomination have a right to use broadcast facilities after August 22, 1956, the date on which the Republican Convention chose Dwight D. Eisenhower as its nominee. You further state that your complaint is filed under Title II of the Communications Act of 1934, as amended.

At the outset, it should be pointed out that Title II of the Act has no application to your complaint inasmuch as said Title relates to common carriers, and a broadcast station is not a common carrier under Section 3(h) of the Act, which provides that ". . . a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

With respect to the "new material", which your instant complaint states that you have in your possession to show that you are a legally qualified candidate for the nomination for President by the Republican Party, it is pointed out that such material was not before the Commission for its consideration at the time you first complained of the action of the networks in refusing to grant you "equal opportunities" in the use of their facilities. Accordingly, it would be academic to determine at this time whether, if the Commission had had before it in April, 1956, the evidence you allege you now have, it could have concluded that you were then a legally qualified candidate for the nomination of the Republican Party for President. Moreover, while, at any time substantially in advance of the August 22, 1956 nomination, we could have considered any valid claim for equal time which you might have presented, we cannot at this late date reconsider our April 11, 1956, denial of your request.

As you know, on August 22, 1956 Dwight D. Eisenhower was nominated as the candidate of the Republican Party

for President of the United States. Since no contest presently exists for said nomination, it is clear that you cannot be considered as a competing candidate for that office so as to entitle you to the "equal opportunities" available prior to the Republican Convention. While we do not suggest that there is no post election remedy available against broadcasters who may have violated the provision of Section 315, in our opinion a broadcast licensee may not be required to furnish use of facilities to a candidate for nomination after the nominating convention has chosen its nominee. Neither could a licensee satisfy the requirements of 315(a) by offering time after the nomination, for the event of nomination terminates the possibility of affording equal opportunity.

In light of the foregoing considerations, no basis exists for granting the relief sought in your complaint. Accordingly, your requests are denied.

By Direction of the Commission
(signed) Mary Jane Morris
Mary Jane Morris
Secretary

cc: Robert A. Kahn
National Broadcasting Company
Columbia Broadcasting System, Inc.
Mutual Broadcasting System, Inc.
American Broadcasting Company

DEPARTMENT OF THE SECRETARY OF STATE
of the State of Montana

Certificate

United States of America }
State of Montana } ss.

I, S. C. Arnold, the duly appointed, qualified and acting Secretary of State of the State of Montana, do hereby

certify that the attached six sheets contain a true, complete and correct list of the names of those persons legally filed and entitled to appear on the ballot for the offices thereon set forth to be voted upon at the Primary Election to be held in the First Congressional District in the State of Montana on the fifth day of June, A. D. 1956; and I further certify that the names of said candidates are arranged according to law as they should appear upon said ballot.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Montana to be affixed, at Helena, the capital, this second day of May, A. D. 1956.

(Great Seal of the State of Montana)

S. C. Arnold
Secretary of State
By Clifford L. Walker
Deputy

REPUBLICAN PARTY
FF.

CANDIDATES FOR PRESIDENT
(Vote for One)

S. C. ARNOLD
LAR DALY

FOR REPRESENTATIVE IN CONGRESS
FIRST CONGRESSIONAL DISTRICT
(Vote for One)

M. S. GALASSO
W. D. (BILL) McDONALD
RUTH GREENOUGH MOSBY
LOUIS WELCH

FOR GOVERNOR
(Vote for One)

J. HUGO ARONSON

FOR LIEUTENANT GOVERNOR
(Vote for One)
GEORGE M. GOSMAN

FOR SECRETARY OF STATE
(Vote for One)
EDNA J. HINMAN

FOR ATTORNEY GENERAL
(Vote for One)
J. JUSTIN BOURQUIN
MICHAEL J. O'CONNELL

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
Secretary of State

To Whom These Presents Come, Greeting:
To the Clerks of the Circuit Courts of the State of Indiana:

I, Crawford F. Parker, Secretary of State of the State of Indiana, hereby certify that the following named persons have filed their declarations of candidacy as required by law for the office of President of the United States of America, and are entitled to be voted for at the Primary Election to be held May 8, 1956.

REPUBLICAN	DEMOCRAT
LAR DALY Chicago, Illinois	ESTES KEFAUVER Chattanogga, Tennessee
DWIGHT D. EISENHOWER Gettysburg, Pennsylvania	

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this 3rd day of April, 1956.

/s/ Crawford F. Parker
Crawford F. Parker
Secretary of State.

(Seal)

Certificate Number 18089

STATE OF ILLINOIS
OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, Charles F. Carpentier, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of a duplicate, unsigned, of one of the Primary Election Certificates, the original being certified to the County Clerk of Cook County by the State Electoral Board under date of February 8, 1956.

copy of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 18th day of July, A.D. 1956.

/s/ Charles F. Carpentier
Secretary of State

(Seal)

PRIMARY ELECTION CERTIFICATE
First Senatorial District

United States of America }
State of Illinois } ss.

Office of the Secretary of State

To the County Clerk of Cook County:

We, the undersigned, Members of the State Electoral Board, pursuant to law in such case made and provided, do hereby certify that the following is a true and correct list, as shown by petitions now on file in the office of Charles F. Carpentier, Secretary of State of the State of Illinois, of the names and political affiliations of all candidates for nomination and election for the following offices,

and of candidates for President of the United States for expression of preference to be voted for at the Primary Election to be held on the 10th day of April, A. D. 1956, in the First Senatorial District, in the County of Cook.

REPUBLICAN PARTY

FOR PRESIDENT OF THE UNITED STATES:

DWIGHT D. EISENHOWER
WILLIAM F. KNOWLAND
LAR (AMERICA FIRST) DALY

FOR UNITED STATES SENATOR:

EVERETT MCKINLEY DIRKSEN

FOR GOVERNOR:

LAR (AMERICA FIRST) DALY
ANTHONY A. POLLEY
WILLIAM G. STRATTON
SIDNEY MCKEE WARD
WARREN E. WRIGHT

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Petitioner, v. United States of America and Federal Communications Commission, Respondents.	Civil Action No. 11946

MOTION TO DISMISS.
(Filed Feb 23 1957)

The United States of America and the Federal Communications Commission, respondents herein, respectfully move this Court that the Petition for Review be dismissed

on the grounds that petitioner has alleged no justiciable case or controversy and the case is accordingly moot.

STATEMENT

This is a petition for review of a letter of the Federal Communications Commission (the Commission) dated October 31, 1956 denying a request by petitioner of October 3, 1956 for a ruling that he was a legally qualified candidate for the Republican Party nomination for President of the United States under Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. 315 and, as such, entitled to use of the broadcasting facilities of certain networks equal to that afforded Dwight D. Eisenhower prior to the Republican Party convention preceding the 1956 presidential election. The relevant facts are as follows:

On April 2, 1956, Lar Daly (petitioner) wrote to the Commission (R. 1-5)[1] referring to an address made by President Eisenhower on February 29, 1956 over the network facilities of the American Broadcasting Company, Inc., Mutual Broadcasting System, Inc., and National Broadcasting Company, and stating that he was entitled to equal opportunity, pursuant to Section 315 of the Communications Act of 1934, as amended,[2] as a legally quali-

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[1] References to "R." are to the record filed with this Court.

[2] Section 315 of the Communications Act, as amended, provides:

"(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: **Provided,** that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section."

fied candidate for the nomination for President of the United States by the Republican Party, to use their facilities. He alleged that the broadcasting companies had refused his requests for such equal broadcast time.

The Commission communicated with the networks (R. 86-89) requesting comments on their alleged refusal. The networks stated in reply that petitioner had failed to show he was a legally qualified candidate. (R. 101-110 A, 112-117, 121-128). The Commission also communicated with the several Secretaries of State (R. 93-96) and received their replies (R. 97, 98, 111). On April 11, 1956, the Commission advised petitioner (R. 112-117) that the provisions of Section 315 of the Act may be invoked only by a "person who is a legally qualified candidate" for public office; that when a question was raised concerning such qualification, it was incumbent upon the claimant to make a showing that he was a legally qualified candidate; and that

> "The Commission has given careful consideration to your letter and to your enclosures. These documents indicate, among other things, that your statements and activities with respect to your candidacy are inconsistent; that although you qualified in Illinois to have your name on the ballot in that state's Republican Primary, you later advised the Illinois authorities that you were no longer a candidate; that although you admit taking such action, you later alleged that you did not really mean to withdraw; that while you claim that you are or will be qualified in states other than Illinois, in various ways including your stationery, you appear to support "Douglas MacArthur or U.S. Senator William E. Jenner of Indiana for President in 1956"; and that you apparently have also been bending your efforts toward obtaining the Republican nomination for Governor of Illinois. The

above, and the other information contained in your letter and enclosures present an extremely confused picture as to whether or not you, in fact, are a candidate for the Republican nomination for President. Accordingly, the Commission is constrained to hold that you have failed to make an unequivocal showing sufficient to permit it to conclude that you are a "legally qualified candidate" within the meaning of Section 315(a) of the Communications Act."

On April 14, 1956, petitioner telegraphed a request for reconsideration of the action of April 11, 1956 (R. 129). On May 3, 1956, the Commission replied by telegram denying reconsideration and further hearing (R. 142). No judicial review of the Commission's April 11, 1956 and May 3, 1956 actions were sought by petitioner.

On August 14, 1956, the Honorable John P. Barnes, Chief Judge of the United States District Court, Northern District of Illinois, Eastern Division, dismissed a complaint filed by petitioner in that Court seeking declaratory judgment of his rights under Section 315 of the Act against the same networks. (Case No. 56 C 1193.) The principal ground of dismissal was that Mr. Daly had failed to exhaust his proper remedies. Neither the United States of America nor the Federal Communications Commission was a party to this action.

On October 3, 1956, petitioner filed a "complaint" (R. 145-162) again requesting a ruling by the Commission that he was a legally qualified candidate for the Republican nomination for President of the United States, and seeking to have the Commission order the networks to afford him the use of their facilities equivalent to that afforded Dwight D. Eisenhower between February 29, 1956 and August 22, 1956. This complaint was based upon allegations that the petitioner had in his possession authenticated documents from the Secretaries of the States of

Illinois, Indiana and Montana, certifying that he was a legally qualified candidate for the Republican presidential nomination; that he was officially recognized as a candidate by the Republican National Committee; that he actually solicited support of delegates to the 1956 Republican convention; and that since Section 315 of the Communications Act is without limitation as to time, he had a right to use broadcast facilities even after August 22, 1956, the date on which the Republican Convention chose Dwight D. Eisenhower as its nominee.

On October 5, 1956, the Commission communicated the contents of the complaint to the networks asking for their comments (R. 163-166). Replies were received (R. 167-168, 169-175; 176-177, 178-179) asserting that the question became moot with the nomination of President Eisenhower on August 22, 1956, and that the matter has been resolved by both the Commission and the United States District Court.

On October 31, 1956, the Commission advised petitioner that since the Republican Convention had, on August 22, 1956, nominated Dwight D. Eisenhower as the candidate of the Republican Party for President of the United States, no contest was then existing for said nomination, and that it could not then consider him as a competing candidate for that office so as to entitle him to "equal opportunities." (R. 184-186). It was also pointed out that any "new material" which petitioner might have in his possession had not been previously submitted to the Commission for its consideration. The Commission further stated that a broadcast licensee would not be required to furnish use of facilities to a candidate for nomination after the nomination convention had chosen its nominee.

Argument.

The petitioner asks the Court to review the Commission's ruling of October 31, 1956 that petitioner could not

be afforded equal time as a candidate for the Republican nomination for President of the United States because the nomination convention in connection with which petitioner wanted "equal time" had long since been concluded. The petition for review must be dismissed because there is no justiciable case or controversy and the case is accordingly moot.[3]

The relief petitioner sought from the Commission was a ruling that he was a legally qualified candidate and an order to the networks "to afford him the use of their facilities, the same as that afforded Dwight D. Eisenhower in all instances beginning with the date of February 29, 1956, and including all such use of defendants' facilities afforded Dwight D. Eisenhower, up to and including the date of August 22, 1956". (R. 161) We believe it clear that the controversy sought to be raised by the petition for review is moot, and petitioner in seeking review of the Commission's rulings of October 31, 1956, and of his status as a candidate for nomination as Republican candidate for President prior to August 22, 1956, is merely

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[3] Although the petition also asks that the Commission's ruling of April 11, 1956 be set aside as invalid, the time to seek review of this ruling has clearly long since expired. Section 402(a) of the Communications Act, 47 U.S.C. 402(a), under which the present action has been brought, provides for review of orders of the Commission other than those specified in Section 402(b) (which is not pertinent here) in accordance with the provisions of Public Law 901, Eighty-first Congress, approved December 29, 1950, Public Law 901, 5 U.S.C. 1031, et seq., provides in Section 4 (5 U.S.C. 1034) that a petition for review may be filed within 60 days after entry of the order sought to be reviewed. The present petition for review was filed on December 28, 1956.

The October 3, 1956 complaint could not have been considered as a second request for reconsideration of the earlier ruling because it was not filed within 30 days of the Commission's refusal on May 3, 1956, to reconsider its April 11, 1956 opinion. See Communications Act, Section 405, 47 U.S.C. 405.

seeking an advisory opinion upon an abstract question of law.[4]

Petitioner's demand for equal broadcast time to that given President Eisenhower prior to the Republican Convention cannot now, and could not in October 1956, be afforded him. Since the convention ended on August 22, 1956, equal use of broadcast facilities among legally qualified candidates for the Republican nomination for President of the United States, even assuming that such equal use was required but not afforded prior to the time the contest for this nomination ceased to exist, is and was then impossible of achievement. Section 315 accords equal time only to candidates, and petitioner was admittedly not a candidate for nomination after the convention had made its selection. Moreover, his possible previous status as a candidate can have no bearing upon any future contests which he may choose to enter. Therefore, the demand for equal time being necessarily the gravamen of petitioner's petition for review of any Commission action, the controversy is moot and the petition must be dismissed. See City of Atlanta, Ga. v. National Bituminous Coal Commission, 69 App. D.C. 115, 99 F.2d 348; Evans v. Federal Communications Commission, 72 App. D.C. 159, 113 F.2d 166.

While petitioner might have brought his alleged new material to the Commission prior to the convention, or sought review of the Commission's first rulings at that time, he did not do so. Instead, he brought an original action against the radio and television networks in the

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[4] To the extent that the petition for review can be viewed as a request for a declaratory ruling, it must fail since, for the reasons given in the text, there is no actual controversy presently in existence. See **Maryland Casualty Co. v. Pacific Coal & Oil Co.**, 312 U.S. 270; **Selected Products Corp. v. Humphreys et al.**, 86 F. 2d 821 (C.A.); **Stone v. Christensen**, 36 F. Supp 739 (D.C. Oregon).

District Court (see statement, supra, p. 3), and later, after the convention was over, again sought to have the Commission require the networks to afford him broadcast time. Therefore, not only did the Commission correctly hold that it could not give petitioner the relief he requested in his October 3, 1956 complaint because it was moot, but, for the same reason the present appeal is also moot.

For, the foregoing reasons, the petition for review should be dismissed.

Respectfully submitted,

/s/ Daniel F. Friedman
Daniel M. Friedman
Attorney, Department of Justice
Counsel for United States of America

/s/ Warren E. Baker
Warren E. Baker
General Counsel

/s/ Richard A. Solomon
Richard A. Solomon
Assistant General Counsel

/s/ Daniel R. Ohlbaum
Daniel R. Ohlbaum
Counsel

/s/ Richard J. Tarrant
Richard J. Tarrant
Counsel
Federal Communications Commission

February 21, 1957

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Plaintiff
vs.
United States of America, Defendant
No. 11946

EMERGENCY MOTION TO CORRECT OMISSION IN RECORD AND MISSTATEMENT IN INDEX TO RECORD SUPPLIED BY FEDERAL COMMUNICATIONS COMMISSION, INTERVENOR.

(Filed Feb 25 1957)

Comes now, Petitioner, Lar Daly, by his attorney, pursuant to Rule 22(d) of the Rules of this Court, and states the following:

1. That Page 95 of the Record, as filed with the Clerk of the Court by the Federal Communications Commission, is missing from said Record, even though the Index to Record, Page 4, states that Page 95 is contained in the Record by the following words:
   Item No. 12—
   Telegram, Indiana Secretary of State—Page 95 to FCC, stating that name of Lar Daly would appear on official primary ballot, dated April 6, 1956.
2. That Page 1, Item 2, Sub-item 6 of the Index to Record contains a misstatement on line 2 by reading, "Lar Daly for Senator and President in Illinois", when it should correctly read, "Lar Daly for Governor and President in Illinois". Page 16 of the Record, pertaining to above misstatement in the Index to Record, and which is a photostatic copy from the Office of the Secretary of State of Illinois, correctly shows a receipt given to Lar Daly, for a Primary Petition, filed

in his behalf, for the Office of Governor of Illinois, on the Republican ticket, for the Primary Election of April 10, 1956.

Petitioner asks that the Court direct the Federal Communications Commission to file, with the Clerk of this Court, said omission in Record and correct said misstatement in the Index to Record, forthwith.

Respectfully submitted,
/s/ Robert A. Kahn
Attorney for Plaintiff

Robert A. Kahn
134 South La Salle Street
Chicago, Illinois
ANdover 3-2283

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Petitioner, United States of America and Federal Communications Commission, Respondents.	Civil Action No. 11946

ANSWER OF LAR DALY, PETITIONER, TO MOTION TO DISMISS.
(Filed Mar 4 - 1957)

Now comes Lar Daly, Petitioner, by his counsel Robert A. Kahn, and files this his Answer to the Motion to Dismiss heretofore filed by the United States of America and the Federal Communications Commission, respondents and intervenors.

1. The reference to the record in said motion on page 2 thereof refers to pages 97, 98 and 111 of the record in this Court to substantiate an allegation of said motion

that the Petitioner was not a legally qualified candidate for President of the United States. However, they have omitted referring to page 95 of the record filed in this Court, in which the Secretary of State of the State of Indiana sent a telegram to the Federal Communications Commission on April 6th, 1956: "Lar Daly has filed his declaration as a Republican Candidate for President of the United States., his name will appear on the official ballot in May 8th Primary Election" by Crawford F. Parker, Secretary of State of Indiana.

2. Said motion relies upon the finding of the Commission as all facts alleged and the conclusion of the Commission as final and conclusive, whereas the purpose of the Complaint filed herein is to review the conclusion of the Federal Communications Commission. Reference, in said motion to dismiss, to the proceedings before the Honorable John P. Barnes, Chief Judge of the United States District Court, Northern District of Illinois, Eastern Division, does not refer to any allegation of the complaint or prayer of the complaint filed in this Court.

3. The said motion to dismiss the complaint of your petitioner in this Court is not predicated upon any defect in said complaint, but purely upon the issues raised by the said complaint, which could only be heard by this Court by answer.

4. The argument in support of said petition relies solely upon the fact that the petitioner is asking for equal time after the Nominating Convention and the Election is over and that it is accordingly a moot question. As a matter of fact, the Complaint does not ask for the relief alleged in the motion to dismiss, but merely asks for a declaratory judgment that the petitioner was a legally qualified candidate for President of the United States according to the Communications Act of 1934 as Amended, Section 315, U.S. Code 47.

5. That the motion to dismiss does not allege any defects in the petition filed herein, but alleges only such matters as should be filed in an Answer to the Petition in order to join issue.

6. Your petitioner requests the Court to grant him the privilege of arguing the motion to dismiss orally, and that it be set down for hearing at an early date, and that the said motion to dismiss the complaint be disallowed.

Respectfully submitted,

/s/ Robert A. Kahn,

Robert A. Kahn, Counsel for
Lar Daly, Petitioner
134 So. LaSalle Street
Chicago 3, Illinois

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
Thursday, March 7, 1957

Before
Hon. Philip J. Finnegan, Circuit Judge
Hon. H. Nathan Swaim, Circuit Judge

Lar Daly, Petitioner, vs. United States of America, Respondent, and Federal Communications Commission, Intervenor-Respondent.	Petition for Review of an order of the Federal Communications Commission.

No. 11946

This matter comes before the Court on the motion of respondents herein to dismiss this petition for review of an order of the Federal Communications Commission on the grounds that petitioner has alleged no justiciable case.

or controversy, and the case is accordingly moot; and the answer of petitioner to said motion and the emergency motion of petitioner for extension of time for filing of appendix and brief of petitioner.

On consideration whereof, it is ordered and adjudged by this Court that the said motion of respondents to dismiss be granted; and

It is further ordered and adjudged by this Court that this petition of Lar Daly for review of an order of the Federal Communications Commission entered therein on October 31, 1956 be, and the same is hereby, Dismissed.

It is further ordered by the Court that the emergency motion for extension of time for filing of appendix and brief of petitioner be denied.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LAR DALY, Petitioner, vs. UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION, Respondents.	Civil Action No. 11946

PETITION FOR REHEARING.

Lar Daly, Petitioner herein, respectfully moves this Court that the order of this Court, dated March 7, 1957, granting Respondents Motion to Dismiss, of February 21, 1957, and dismissing Petitioner's Petition for Review, of December 28, 1956, be vacated on the grounds that Petitioner does have a justiciable case or controversy and the case is accordingly not moot; and in support of said allegation, Petitioner again requests the Court for oral arguments on the matter.

STATEMENT.

Petitioner's Case Is Not Moot.

This Petition for Rehearing states that Petitioner's case is not moot because the relevant facts are as follows:

1. In Respondents Motion to Dismiss, Page 4, Footnote, paragraph 2, Respondents state: (R. 145-162)[1]

> "The October 3, 1956 Complaint could not have been considered as a second request for reconsideration of the earlier rulings (R. 118-119) because it was not filed within 30 days of the Commission's refusal, on May 3, 1956, (R. 142) to reconsider its April 11, 1956 opinion (R. 118-119). See Communications Act, Section 405, 47 U.S.C. 405.

Petitioner points out to the Court that in his Formal Complaint to the Federal Communications (the Commission), Commission of October 3, 1956 (R. 145-162) on Page 8, paragraph 3, he states:

> "Complainant states that this formal complaint contains a great deal of new material matter upon the same cause of action, as outlined in Complainant's informal complaint of April 5, 1956."

That on the same Page 8, paragraph 2, Petitioner states:

> "Complainant, availing himself of the "Resubmission, 6 months' rule", as stated in Section 1.574 of "Recapitulation—Part 1—Practice and Procedure, Chapter 1, Title 47 [Telecommunication)", recapitulated as of December 1, 1955, now files this formal complaint under Title II of the Communications Act of 1934, as amended.

Petitioner wishes to point out to the Court that the term "Title II" was a typographical error, and should have appeared as "Title III". The Commission, in its Directive of October 31, 1956 against Petitioner (R. 185, paragraph 2), cites this error against Petitioner.

Petitioner directs the Court's attention to the fact that the Commission accepted his Formal Complaint of October

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[1] References to "R", are to the Record filed with this Court by the Commission.

3, 1956 as valid in form and substance, and as such, must have considered it as a "continuing cause of action" of his Informal Complaint of April 5, 1956. Petitioner complied with the Commission's own Rules and Regulations in the matter, by specifically stating that the Formal Complaint was "upon the same cause of action", as his April 5, 1956 Informal Complaint.

Petitioner states to the Court that his Informal Complaint and his Formal Complaint are one and inseparable, and that an examination of the Record, as certified to this Court by the Commission itself, will show that, in justice and common sense, both of Petitioner's Complaints are one and the same cause of action, and as incapable of separation as would be the body from the soul in this life.

Petitioner points out that the Commission forwarded copies of his October 3, 1956 Formal Complaint to the four Television and Radio networks in question (R. 163-164-165-166), and asked them to submit their comments on same as promptly as possible. Various notations of Commission Staff personnel also appear on the Commission's letters to the networks. The Commission received replies from the four networks between the dates of October 15-19, 1956, which are remarkable for their length and detail, if the matter was supposedly one of being moot and, therefore, academic (R. 167-179). The Commission also acknowledged the four networks' replies (R. 180-181-182-183). All four Commission letters to the networks were mailed on October 5, 1956, and the networks' replies were all made between the dates of October 15-19, 1956, which seems hardly coincidental, and suggests collusion and cooperation among the networks in their replies to the Commission.

Petitioner points out to the Court that the Commission, by its own action, in seeking the opinions of four private

business concerns; considering the Formal Complaint among its own staff personnel; adjudicating the matter; and then taking more than two pages of typewritten words to explain its October 31, 1956 Directive against Petitioner (R. 184-185-186), certainly went to a lot of trouble to dispose of a matter that the Commission, in its Motion to Dismiss of February 21, 1957, states is "accordingly moot".

Petitioner states to the Court, "Why did not the Commission refuse to accept his October 3, 1956 Formal Complaint, in the first place, and return it to him with a simple ruling that his case was moot, instead of seeking the opinions of four private business interests?". The same four private business interests had also given their opinions, or more properly "excuses", to the Commission before its April 11, 1956 Directive was issued against Petitioner (R. 118-119) and (R. 100) (R. 101-102-103) (R. 112-113) and (R. 121-122-123-124-125-126-127-128). The Commission's requests to the four private business concerns are contained in (R. 86-87-88-89), made on April 5, 1956.

Petitioner points out to the Court that the four networks, in their replies, deliberately withheld knowledge from the Commission that Petitioner, after exhaustive inquiries by the four networks, had been confirmed as a "legally qualified candidate" by the duly constituted authority of the sovereign State of Illinois. All four networks in their replies, three of which were again coincidentally made on April 9, 1956 and one on April 11, 1956, to the Commission's April 5, 1956 request, stated to the Commission that one of the prime reasons they had refused Petitioner's requests for "free and equal time", made to all four networks' Presidents by Petitioner on March 5, 1956. (R. 37-38), was because of a letter written by Petitioner to the Illinois Secretary of State on February 21,

1956 (R. 34), purportedly asking that his name be withdrawn as a candidate for President of the United States, on the Republican ticket, for the April 10, 1956 Illinois Primary Election.

Petitioner points out to the Court that he wrote the said letter 24 days after January 28, 1956, the last day to legally withdraw from the April 10, 1956 Illinois Presidential Primary Election, and 13 days after February 8, 1956, the day on which the Illinois State Electoral Board adjourned, after certifying the names of all legally qualified candidates to 102 County Clerks of Illinois, for the April 10, 1956 Primary Election. Petitioner points out to the Court that the Illinois Secretary of State, in a letter to Petitioner of February 24, 1956 (R. 35) advised Petitioner that it was not only legally, but practically and absolutely impossible, to decertify himself or be decertified as a legally qualified candidate, after February 8, 1956, as the Illinois State Electoral Board having certified and adjourned, no provision was contained in Illinois Law for reconvening said Board.

Petitioner points out to the Court that four of its six members, as of December 28, 1956, the date on which Petitioner's Petition for Review was filed, were residents of Illinois, acquainted with the Election of Laws of Illinois, and having particular knowledge of filing and withdrawal dates and the date of certification of candidates, especially as pertaining to candidates for state-wide offices and the Illinois Presidential Preferential Primary, by the Illinois State Electoral Board.

Petitioner points out to the Court that the four networks, knowing of the February 24, 1956 letter from the Illinois Secretary of State to Petitioner (R. 35), deliberately withheld knowledge of same from the Commission, in their replies of April 9-11, 1956, to the Commission's April 5,

1956 request. Petitioner does not have definite knowledge that the Commission knew of the February 24, 1956 letter from the Illinois Secretary of State to Petitioner, the same time as did the four networks, which would be sometime between March 8-12, 1956 (R. 39-42). However, Petitioner points out that the Commission, from a letter received by it from the Illinois Secretary of State on April 9, 1956 (R. 97-98) must have known that, according to Illinois law, and in line with its own Rules and Regulations as to the definition of a "legally qualified candidate"; Petitioner possessed the requirements entitling him to be declared a legally qualified candidate.

Petitioner points out to the Court that on March 14, 1956 (R. 44-45—clear copy of same R. 106-107) he explained to one of the four networks, in detail, the political reason behind his purported withdrawal letter to the Illinois Secretary of State, of February 21, 1956. The other three networks were told by Petitioner in letters of March 21, 1956 (R. 50, paragraph 4); March 31, 1956 (R. 72, paragraph 4); and March 31, 1956 (R. 82, paragraph 2) how they could satisfactorily ascertain for themselves the reason for Petitioner's purported withdrawal letter to the Illinois Secretary of State, of February 21, 1956.

Petitioner does, however, point out to the Court that the Commission definitely knew on April 4, 1956 (R. 94) of the February 24, 1956 letter of reply from the Illinois Secretary of State to Petitioner, because on April 4, 1956, the Commission received Petitioner's Informal Complaint (R. 1-5), and on (R. 4, paragraph 6) Petitioner states that he enclosed all original correspondence explaining his February 21, 1956 purported withdrawal letter to the four networks, for the Commission's examination.

2. Petitioner further alleges that his case is not moot because of the illegal and unjust ruling against Petitioner by the Commission on April 11, 1956, as cited in Respondents' Motion to Dismiss of February 21, 1957 (page 2, quotation of paragraph 2) and (R. 118, last paragraph), wherein the Commission states that Petitioner failed "to make a showing that he was a legally qualified candidate." Petitioner states that he did show the Commission, beyond all doubt, that he was a legally qualified candidate according to the Commission's own Rules and Regulations. Further, Petitioner states that the Commission, by its own admission in the Record which it certified to this Court, (R. 35-95) knew, no later than April 6, 1956, five days before it ruled against Petitioner on April 11, 1956, that Petitioner had been confirmed to the Commission as a legally qualified candidate for President of the United States, by the duly constituted authorities of the States of Illinois and Indiana, the supreme arbiters of the matter in question, according to accepted Federal Constitutional Law.

3. Respondent's Motion to Dismiss, (page 3, para. 1, lines 4, 5) states that:

> "No judicial review of the Commission's April 11, 1956, and May 3, 1956 actions were sought by petitioner."

Petitioner states that his April 5, 1956 appeal to the Commission was admittedly in the nature of an "Informal Complaint", and that he had at least 6 months from the date of April 11, 1956 to avail himself of the "Resubmission, 6 months rule", according to the Commission's Rules and Regulations, in which to file a "Formal Complaint", based on the same cause of action as that of April 5, 1956. Petitioner did file a "Formal Complaint" with the Commission on October 3, 1956, which was accepted as valid and

within the 6 month filing period. Hence, Petitioner, knowing that as of October 3, 1956, he had not as yet finally exhausted his administrative remedy before the Commission, had no reason to seek a judicial review of the Commission's April 11, 1956, and May 3, 1956 actions against him.

4. Respondents Motion to Dismiss (page 3, para. 2) cites Petitioner's action before Chief Judge John P. Barnes of the United States District Court, Northern District of Illinois Eastern Division, in support of their contention that Petitioner's cause is moot. Petitioner points out that said action was taken as of right by an individual American citizen, who believed that he had been denied his rights under Federal Law through an Act of Congress, by four private business corporations, viz., the four Radio and Television networks, by their failure to comply with the provisions of the Communications Act of 1934, as amended, U.S. Code 47, which grants free and equal time to a legally qualified candidate to reply to an opponent who had been granted free television and radio time by use of the facilities of the four networks. Naturally, the United States of America or the Commission were not named as parties in the action, as they had no direct material interest in the matter. Petitioner, in a last desperate attempt to secure the television and radio time he believed was his legal and rightful due, before the opening of the 1956 Republican National Convention in San Francisco, Calif. on August 21, 1956, began the action before Judge Barnes on July 16, 1956. Judge Barnes, after a considerate and sympathetic hearing of the issue, denied Petitioner's request for a Declaratory Judgment against the four networks, mainly on the ground that Petitioner, having not exhausted his administrative remedy, the Court lacked jurisdiction in the matter.

5. Petitioner points out that in Respondent's Motion to Dismiss (page 3, para. 3, line 2), Respondent uses the four words in sequence, "again requesting a ruling". This is obviously an inadvertent, but implied, admission that Petitioner's October 3, 1956 Formal Complaint, and his April 5, 1956 Informal Complaint, are one and the same inseparable cause of action. Petitioner points out to the Court again, that, in Respondent's Motion to Dismiss (page 4, footnote, second para.), Respondents seek to declare Petitioner's complaints as two separate requests, and therefore, not of the same cause of action. Respondents also fail to state in their Motion to Dismiss (page 3, para. 3) that the authenticated certified documents from the States of Illinois, Indiana and Montana, certifying that Petitioner was a legally qualified candidate, were so authenticated on February 8, April 3, and May 2, 1956, respectively.

That the Commission was informed of Petitioner's Illinois February 8, 1956, and Petitioner's Indiana April 3, 1956 certification, on or before April 6, 1956.

That the Commission knew, beyond all doubt, that Petitioner met the requirements of its own Rules and Regulations as to what constitutes a "legally qualified candidate", according to Sections 3.120 (Radio) and Section 3.657 (Television), especially as applied to the "meeting the qualifications of the applicable laws" definition. Petitioner avers, and Respondents cannot deny, that "the applicable laws" mean the Election Laws of the various sovereign States of this American Union, as they are interpreted and defined by the duly constituted authorities of said sovereign States.

Nowhere, in Respondents Motion to Dismiss, (page 3, para. 3) does the Commission challenge the validity or authenticity of Petitioner's certification as a legally quali-

fied candidate by the sovereign States of Illinois, Indiana and Montana.

6. In Respondents Motion to Dismiss (page 4, para. 1, lines 7, 8, 9), it states:

> "It was also pointed out that any 'new material' which petitioner might have in his possession had not been previously submitted to the Commission for its consideration."

Petitioner points out to the Court that the "new material" to which Respondents refer was principally Petitioner's declaration to the Commission, made in his Formal Complaint of October 3, 1956, that he had in his possession the authenticated documents from the States of Illinois, Indiana and Montana, which certified Petitioner as a legally qualified candidate, before the date of April 11, 1956, in the States of Illinois and Indiana. This supposed "new material" to which Respondents refer was really not new at all to the Commission, because the Commission investigated Petitioner's claim to being a legally qualified candidate, made on April 5, 1956 in his Informal Complaint to the Commission, by sending telegrams to the Secretaries of State of Illinois and Indiana on April 5, 1956 (R. 90-91).

The replies which the Commission received from the Secretaries of State of Illinois and Indiana (R. 95-97-98), along with copy of the Illinois' Secretary of State letter to Petitioner of February 24, 1956, (R. 35) which said original letter was given to the Commission on April 4, 1956 for the Commission's examination, constituted indisputable proof that the Commission knew, on or before April 4, 1956, and certainly no later than April 6, 1956, that Petitioner was a legally qualified candidate beyond all possibility of doubt.

Yet, in spite of such definite knowledge, the Commission, on April 11, 1956, refused to declare Petitioner a legally qualified candidate as required by law. Instead, the Commission, in a parrot-like repetition of the excuses made to the Commission and Petitioner, by four private business concerns, viz., the four Television and Radio networks, issued its April 11, 1956 ruling against Petitioner (R. 118-119), employing language which in its wording and phrasing was almost identical as that made in the replies of the four networks to the Commission's request for their opinions on Petitioner's April 5, 1956 appeal to the Commission (R. 100) (R. 101-102-103) (R. 112-113) and (R. 121-122-123-124-125-126-127-128).

7. In Respondent's Motion to Dismiss (page 5, para. 1, beginning line 2), it states:

> "We believe it clear that the controversy sought to be raised by the petition for review is moot, and petitioner in seeking review of the Commission's ruling of October 31, 1956, and of his status as a candidate for nomination as Republican candidate for President prior to August 22, 1956, is merely seeking an advisory opinion upon an abstract question of law.[4]
>
> [4] Footnote on page 5—To the extent that the petition for review can be viewed as a request for a declaratory ruling, it must fail since, for the reasons given in the text, there is no actual controversy presently in existence. See *Maryland Casualty Company* v. *Pacific Coal and Oil Co.*, 312 U.S. 270; *Selected Products Corp.* v. *Humphreys et al.*, 86 F. 2d. 821 (C.A.); *Stone* v. *Christensen*, 36 F. Supp. 739 (D.C. Oregon)

Petitioner states to the Court that the two principal issues embodied in his Petition for Review are ones of basic Federal Constitutional Law, viz., the rights of the sovereign State of this Union as guaranteed by Article X of the Bill of Rights in the Constitution of the United States; and the

inalienable and constitutional right of an American citizen to avail himself of, and be accorded the rights guaranteed by the Constitution of the United States, as defined, implied and inferred by the very foundational concept of the Supreme law of this Republic, viz., "Equal Justice Under Law."

Petitioner states to the Court that his cause in upholding the rights of the sovereign States of this Union, and his efforts to secure his Constitutional rights as an American citizen, is far more than the "mere seeking of an advisory opinion upon an abstract question of law."

Those are the basic and fundamental issues involved in this case, and Respondents, by seeking to avoid the issue with pleadings and assertions that the matter is moot and academic, are deliberately misstating the obviously relevant facts. Petitioner states that the cases cited in Respondents Footnote to page 5 of their Motion to Dismiss have absolutely no relevancy or materiality to the Constitutional nature of Petitioner's case.

8. In Respondents Motion to Dismiss (page 5, para. 2, beginning sixth line from the bottom of paragraph), it states:

> "Therefore, the demand for equal time being necessarily the gravamen of petitioner's petition for review of any Commission action, the controversy is moot and the petition must be dismissed. See *City of Atlanta, Ga.* v. *National Bituminous Coal Commission,* 69 App. D.C. 115, 99 F.2d 348; *Evans* v. *Federal Communications Commission,* 72 App. D.C. 159, 113 F. 2d 166.

Petitioner most emphatically points out to the Court that "the demand for equal time is necessarily the gravamen of petitioner's petition for review" is absolutely inaccurate and at variance with the facts of Petitioner's Petition for Review. Nowhere in the 5 points of his prayer for relief

does Petitioner ask this Court to order the Commission to direct the four Television and Radio networks to give him any equal time. Respondents apparently have deliberately sought to mislead the Court as to the true facts and nature of Petitioner's prayer for relief, as contained on pages 4 and 5 of Petitioner's Petition for Review, filed in this Court on December 28, 1956. In Point 4 of his prayer for relief, Petitioner asks for:

> "A Declaratory Judgment by this Court that the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner were unjustified and invalid in their entirety."

In Point 5 of his prayer for relief, Petitioner asks for:

> "An Order, Ruling or Decree by this Court setting aside and suspending the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner; and directing the Federal Communications Commission to enter an order in accordance with the Declaratory Judgment of this Court."

It cannot logically or sensibly be construed from the language and intent of points 4 and 5 of Petitioner's Petition for Review that he is asking the Court to secure him free Television and Radio time, or that he is asking the Court to direct the Commission to secure him the time. Petitioner is asking the Court to uphold and confirm the rulings of the duly constituted authorities of the sovereign States of Illinois, Indiana and Montana that he was a legally qualified candidate for President of the United States, according to the "applicable laws of their various states", and that such knowledge was possessed fully by the Commission on or before April 11, 1956, the date of its original ruling against Petitioner.

Points 1, 2 and 3 of Petitioner's prayer for relief in his Petition for Review ask the Court to affirm the actions

of the sovereign States in the matter, and Points 4 and 5 of the same prayer for relief ask the Court to declare that the Commission's rulings of April 11, 1956, and October 31, 1956 were unjustified and invalid in their entirety, and order the Commission to now enter a Directive or Order in the matter in accordance with the Court's Declaratory Judgment.

9. In answer to the allegations contained on Page 5, last para., and page 6, of Respondents Motion to Dismiss, Petitioner states that, in view of his not asking this Court for the same relief in his Petition for Review as that asked of the Commission in his Formal Complaint of October 3, 1956, his present appeal, as represented by his Petition for Review, is not moot.

STATEMENT.

Petitioner Has Alleged A Justiciable Case Or Controversy.

This Petition for Rehearing states that Petitioner has alleged a justiciable case or controversy, because the relevant facts are as follows:

1. In Respondents Motion to Dismiss (page 2, para. 2, Quotation, beginning line 4, 5 and 6) it states:

> "that although you qualified in Illinois to have your name on the ballot in that state's Republican Primary."

Petitioner points out to the Court that by the above words, Respondents concede that the Commission admits that Petitioner definitely was a legally qualified candidate in the State of Illinois on January 23, 1956, the day on which Petitioner filed his Petition as a Republican candidate for President of the United States, (R. 17) for the April 10, 1956 Illinois Primary Election, with the Illinois Secretary of State; and that he was so certified as a legally qualified

candidate, beyond all doubt, by the Illinois State Electoral Board, the unquestioned duly constituted authority, on February 8, 1956 (R. 35, para. 3) and (Exhibit to Petitioner's Petition for Review, filed in this Court on December 28, 1956).

Petitioner emphatically points out to the Court that under Illinois Election Law, once an candidate is certified as a legally qualified candidate by the Illinois State Electoral Board, and the Board adjourns, he cannot decertify or dequalify himself of his own volition; and neither can he be decertified or dequalified by any individual or agency, as no provision is made in Illinois Election Law for the Board to reconvene (R. 35). The reason for such ruling is that there must be an absolute deadline in which the Illinois Secretary of State can let the County Clerks of Illinois know just who the names of the legally qualified candidates are at the final deadline date, so that the County Clerks can begin preparations for the printing of the ballots for the Primary or Election in their various Counties, and the early providing of such ballots for absentee voters who will be out of their home Counties or the State on Primary or Election day, and also for the mailing out of ballots for the armed forces personnel, especially those stationed outside of Illinois and the continental limits of the United States of America. This is explained to Respondents by the Illinois Secretary of State in (R. 35). If there was no absolute deadline limit to the filing and withdrawal strategems of political candidates, actual makeup of the ballots would be impossible and elections in Illinois could not be properly, or even haphazardly conducted.

2. In Respondents Motion to Dismiss (page 2, para. 2, Quotation, beginning line 9, 10) it states:

> "that while you claim that you are or will be qualified in states other than Illinois,"

Petitioner emphatically points out to the Court that in his original Informal Complaint to the Commission, (R. 1, para. 3), and which the Commission admits receiving on April 4, 1956 (R. 94), he stated that he was certified as a legally qualified candidate in the State of Indiana, for President of the United States on the Republican ticket, for the Indiana Primary Election of May 8, 1956.

The Commission, on April 5, 1956, investigated Petitioner's claim to his Indiana certification by sending a telegram to the Indiana Secretary of State, asking if Petitioner was a legally qualified candidate (R. 91).

The Indiana Secretary of State replied to the Commission (R. 95), by telegram, dated April 6, 1956, verbatim copy of which is as follows:

WESTERN UNION

April 6, 1956

Mary Jane Morris,
Federal Communications Commission
Washington D.C.

LAR DALY HAS FILED HIS DECLARATION AS A REPUBLICAN CANDIDATE FOR PRESIDENT OF THE U.S., HIS NAME WILL APPEAR ON THE OFFICIAL BALLOT IN MAY 8TH. PRIMARY ELECTION

CRAWFORD F. PARKER
SECRETARY OF STATE
OF INDIANA

Petitioner states that he has a full, true and complete copy of the above telegram, provided him by the Indiana Secretary of State on February 19, 1957, at Petitioner's request, for the following reason:

The original Certified Copy of the Record in this case was filed with the Clerk of this Court on February 5, 1957. On February 7, 1957, Petitioner removed the Record from

this Court, with the Clerk's permission, after signing receipt for same. In the Clerk's presence, Petitioner examined the Index and the Record itself. On Page 5, Item 12 of the Index to Record, it states that the above telegram to the Commission from the Indiana Secretary of State was contained in the Record on Page 95. Upon examining the Record to read said telegram, Petitioner discovered that Page 95 was missing from the Record. Petitioner immediately called the Clerk's attention to the omission.

Petitioner filed a Motion to direct the Commission to provide the missing Page 95 so that same would be part of the official certified Record. The Honorable Walter C. Lindley, Circuit Judge of this Court, granted Petitioner's Motion, and ordered the Respondents to provide the missing Page 95 and to be made part of the Record. Petitioner assumes that the Commission complied with the Court's order. Petitioner states to the Court that it is extremely coincidental, that out of 187 Pages, including Certificate of Secretary of the Commission, comprising the certified Record in this case, one of the two pages most important to Petitioner's cause was inadvertently missing, and only fortunately discovered to be missing, when first examined by Petitioner on February 7, 1957, in the presence of the Clerk.

3. In view of the relevant facts, stated in points 1 and 2 heretofore listed, Petitioner avers that he does have a justiciable case or controversy, beyond all possibility of doubt.

ARGUMENT.

PRINCIPAL AND SOLE ISSUE OF PETITIONER'S CASE.

Petitioner respectfully states to this Court that the following proposition is the central and fundamental issue to be decided in this Petition for Rehearing, and also in Petitioner's Petition for Review, viz.:

> **SHALL THE RULINGS OF A FEDERAL REGULATORY AGENCY, APPARENTLY INFLUENCED BY THE OPINIONS OF AFFECTED PRIVATE BUSINESS CONCERNS, SUPERSEDE AND TAKE PRECEDENCE OVER THE DECISIONS AND RIGHTS OF THE SOVEREIGN STATES OF THIS UNION, IN MATTERS PERTAINING TO ELECTIONS HELD WITHIN THE VARIOUS STATES' BORDERS?**

Article X of the Bill of Rights of the Constitution of the United States reads as follows:

> **"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."**

Petitioner avers that it has always been generally accepted, as a basic principle of Federal Constitutional Law, that the States of this Union are supreme in all matters pertaining to Elections held within their state borders.

Consequently, it must logically follow then, that, whenever the duly constituted authority of a sovereign State declares a citizen to be a legally qualified candidate for an election, held within its state borders, such decision is supreme, absolute and final; and all individuals and agencies, whether of a Federal, State, County or local character,

are bound to accept such decision without reservation, and be governed accordingly in any determination having relevancy to such decision.

EXHIBITS OF PETITIONER.

Petitioner submits exhibit marked "Prime Exhibit" for the Court's examination, and avers that its contents are self-explanatory and support Petitioner's cause of action.

Exhibit marked "No. 1" is self-explanatory and supports Petitioner's cause of action. All of the other States' Attorneys General who replied to Petitioner's letter of February 27, 1957, naturally, took the position of the Illinois Secretary of State in their replies. The Offices of the Attorneys General of the States of Georgia, Alabama and Indiana are fearlessly expressive within the limitations of their constitutional powers.

Exhibit marked "No. 2" is the Rules and Regulations of the Federal Communications Commission, and known as FCC Primer of September 8, 1954, entitled "Use of Broadcast Facilities by Candidates for Public Office." Petitioner calls the Court's attention to the definition of what constitutes a "legally qualified candidate", (Front-page, third column and page 2, first column); also to the definition of what constitutes a person as a "legally qualified candidate for nomination as the candidate of a party for President or Vice-President of the United States; also Question and Answer No. 18, which supports Petitioner's appeal to the Commission on April 5, 1956, and which was the basis for nation-wide newspaper stories by an "authorized spokesman" for the Commission, on March 1, 1956, that, "so far as he knew, only William F. Knowland could claim free and equal Television and Radio time to reply to Dwight D. Eisenhower's address to the nation on February 29, 1956." It was obvious from that statement that the FCC

"authorized spokesman" did not know, at that time, that Petitioner had already been certified as a legally qualified candidate for President of the United States, on the Republican ticket, for the April 10, 1956 Illinois Primary Election, said certification being made by the Illinois State Electoral Board on February 8, 1956, the same date on which Dwight D. Eisenhower and William F. Knowland had also been certified in Illinois. However, on March 1, 1956, after Dwight D. Eisenhower's address of February 29, 1956, William F. Knowland, formally and publicly, quit the 1956 Republican President race and did not request the free Television and Radio time due him from the networks. William F. Knowland did attempt to have his name removed from the Illinois ballot, but was prevented from doing so because the Illinois State Electoral Board had certified and adjourned on February 8, 1956, and there was no possible way that he could have himself decertified as a "legally qualified candidate."

Exhibit marked "No. 3" is a copy of Hearings held by a Sub-committee of the United States House of Representatives, in March and July, 1956, regarding the operations of the Federal Communications Commission. Petitioner directs the Court's attention to the parts of the Exhibit marked by black lines. These materially support Petitioner's belief that the Commission did not act as a free and independent Federal Agency in its consideration of Petitioner's case, but was greatly influenced by the opinions, and probable dictates, of the four Television and Radio networks.

Exhibit marked "No. 4" is a copy of Hearings held by the Committee on Interstate and Foreign Commerce of the United States Senate, in March, May, June and July, 1956. Petitioner directs the Court's attention to the parts marked by black lines, particularly, Paragraph 3 on Page 2859,

wherein Dr. Frank Stanton, President of Columbia Broadcasting System, in a letter to the Committee dated June 22, 1956, states in effect that Petitioner was entitled to the free and equal Television and Radio time, to reply to Dwight D. Eisenhower's address of February 29, 1956. Further, Petitioner directs the Court's attention to the black-marked lines on Pages 2862 and 2863 of Exhibit 4. This is a statement of Richard S. Salant, Vice-President of Columbia Broadcasting System, made to the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives, in the summer of 1955. In this statement, Mr. Salant declares in effect that, based on past performances, the Federal Communications Commission should have declared Petitioner a "legally qualified candidate in early April of 1956, when the Commission first received Petitioner's appeal on April 4, 1956.

It is also laughable when it is considered how groundless were the Television and Radio networks fears that the 1956 Presidential Primary Elections might be loaded with "no practical limit", and a "great many soapbox orators and publicity seekers", and a "couple of dozen" candidates for President, and a "potentially unlimited" number of candidates for President and Congressman, saturating the networks airwaves, "in whom the public has no interest at all."

In the 1956 Republican President Elections, there were only two candidates running for President in more than one State Presidential Primary Election. They were: Dwight D. Eisenhower and Lar Daly. In Wisconsin, John Chapple of Ashland, Wisconsin, did qualify as a Republican candidate for President against Dwight D. Eisenhower, for the April, 1956 Republican Primary. Mr. Chapple ran in no other state. Though the name of William F. Knowland appeared on the ballot for the Illinois

Republican Primary in April, 1956, Mr. Knowland, on March 1, 1956, publicly declared himself as no longer a bona-fide candidate. On the 1956 Democratic Presidential side, Petitioner believes that only the names of Adlai Stevenson, Estes Kefauver, and a few others appeared on the various States' Democratic Presidential Primary ballots. The networks were very skimpy in giving any free Television and Radio time to the three leading 1956 Democratic Presidential candidates, Adlai Stevenson, Estes Kefauver, and Averill Harriman.

It is significant that of the seven bills in the Senate, and nearly a like number in the House, during the last Session of Congress, which the networks would liked to have seen made into law, none of them were passed by the elected peoples representatives in Congress. This was the result, in spite of all of both the major parties "big-guns" in the Congress, favoring and working for passage for one or more of the bills.

Page 2896 of Exhibit No. 4 is a copy of a letter from Thomas E. Ervin, Vice-President and General Counsel of National Broadcasting Co., to Hon. Warren G. Magnuson, Chairman of the U.S. Senate Committee on Interstate and Foreign Commerce, and is dated August 2, 1956. In the letter, Mr. Ervin voices his fears that "nearly anyone may claim to be a candidate for his party's nomination for high office", and "that a dozen or more candidates could do one or more of two things."

Exhibit No. 5 is a copy of Petitioner's requests to the Presidents of the four networks for free and equal time to answer Dwight D. Eisenhower's addresses of April 16 and August 3, 1956. Petitioner also requested free and equal time to answer Dwight D. Eisenhower's address of April 21, 1956, but has misplaced his copy of same.

Exhibit No. 6 is a copy of Petitioner's pending certification as a legally qualified candidate in the State of Montana, for the June 5, 1956 Montana Primary Election, and is dated April 25, 1956.

Exhibit No. 7 is a letter to Dwight D. Eisenhower from Petitioner and a reply to same. It shows that Petitioner's opponent, Dwight D. Eisenhower, assisted greatly in securing Petitioner Hotel Headquarters space in San Francisco for his Convention Campaign Headquarters. Also, the correspondence with Mr. Ted Dalton, of the Republican National Committee Housing Bureau, shows that he was accepted as a bonafide and actively campaigning candidate for the 1956 Republican Presidential nomination by the supreme managing Committee of his party; and also, demolishes the excuses of the Commission and the networks that that they were in doubt as to whether Petitioner was a "bona-fide" candidate.

Exhibit No. 8 contains copies of letters and telegrams to Douglas MacArthur and William E. Jenner from Petitioner, with replies to same; also copies of news stories that Petitioner definitely would be a serious and campaigning candidate for the 1956 Republican Presidential nomination if MacArthur or Jenner refused to run in Illinois. The material in this Exhibit demolishes the Commission's and the networks excuses that I seemed to be supporting MacArthur or Jenner for President.

Exhibit No. 9 contains copies of news stories of my purported "withdrawal" from The Illinois Republican Presidential race, made on February 21, 1956, and shows conclusively that the action was merely a successful political strategem to advance my Presidential candidacy by securing newspaper publicity, it being known to Petitioner that he could not possibly have his name removed from the Illinois ballot, or get himself decertified as a "legally qualified candidate", after February 8, 1956. This Exhibit also

contains news stories that William F. Knowland tried to withdraw from the Illinois race, after February 8, 1956 but could not do so under Illinois law. Also, the Exhibit contains a news story from Broadcasting-Telecasting magazine, admittedly "the Bible of the Communications Industry", which shows that the Illinois Secretary of State declared Petitioner was within his legal rights in running for Governor as well as President in the same Illinois Primary Election, as no conflict of offices was involved. This Exhibit demolishes the Commission's and the networks excuses, cited against Petitioner's not being a "legally qualified candidate as contained in (R. 118-119).

Exhibit No. 9 is a copy of story from Broadcasting-Telecasting magazine of March 5, 1956. It deals with salient features of Dwight D. Eisenhower's address of February 29, 1956, which the Commission definitely considered political in nature, and shows that the Commission, by inference and implication, included Petitioner among those eligible to the free and equal time to reply to Dwight D. Eisenhower's address of February 29, 1956, due to Petitioner's having been certified as a legally qualified candidate in Illinois on February 8, 1956, which fact appears to have been unknown to the Commission on February 29, 1956.

CONCLUSION.

For, the foregoing good and substantial reasons, this Petition for Rehearing should be granted, and Respondents Motion to Dismiss, granted by this Court on March 7, 1957, should be vacated.

Respectfully submitted,

ROBERT A. KAHN
Attorney for Petitioner, Lar Daly

134 South LaSalle Street
Chicago 43, Illinois
ANdover 3-2283

APPENDIX.

PRIME EXHIBIT.

March 15, 1957

Attorney General Latham Castle
Capitol Bldg.
Springfield, Ill.

Mr. Attorney General:

I am engaged in court action against the Federal Communications Commission in the United States Court of Appeals in Chicago. A copy of my Petition for Review is enclosed. Also, a copy of a letter sent to every U. S. Senator and Congressman. I seek a Declaratory Judgment from the Court that I was a legally qualified candidate for President of the United States, on the Republican ticket, for the April 10, 1956 Primary Election. You were a member of the Illinois State Electoral Board, as it was constituted on February 8, 1956. On that day, the Board certified me as a legally qualified candidate to all 102 Illinois County Clerks.

My whole cause before the Court is based on the principle of State Rights, especially as they pertain to the right of the 48 States of this Union to be supreme in all matters pertaining to Elections, held within their state borders. In this cause, I am fighting for the sovereign rights of our own State of Illinois, and the right of one of its duly constituted authorities, viz., the Illinois State Electoral Board, to be preeminent over the rulings of a Federal Regulatory Agency and the opinions of private business concerns, viz., the four major Television and Radio networks, NBC, CBS, ABC and MBS.

My cause is particularly apropos when it is considered that the motto of our own State of Illinois is, "State Sovereignty, National Union." Article X to the Amendments of the Federal Constitution (Bill of Rights) specifically guarantees to the States the right to be supreme in all matters pertaining to Elections and the Franchise.

Enclosed are two copies of a Deposition. I ask that you sign one, have it notarized and return it to me at your earliest possible convenience. I want to present it to the Court to bolster my Petition for Rehearing, which must be filed soon. On March 7, 1957, the Court allowed the FCC's Motion to Dismiss my Petition for Review. My Petition for Rehearing is a final step in the Appeal Court before the case goes to the U. S. Supreme Court on Certiorari.

Copies of my Petition for Review, Congressional Letter, and personal letters similar to this, have been sent to the other four members of the Illinois State Electoral Board, as constituted on February 8, 1956, along with two copies of the Deposition also. They have been asked to sign one copy and return it to me.

To you personally, as Attorney General of Illinois, and on behalf of the citizens of Illinois, I ask you to enter the case as Intervenor in my behalf. Your action would be just and proper, and a rebuke and protest to the timidity of a Federal Regulatory Agency, which apparently is nothing but a "Servant-Boy" for the Television and Radio networks it is supposed to regulate for the best interests of the American people.

(Letterhead of Latham Castle, Attorney General, State of Illinois)

March 19, 1957

Mr. Lar J. Daly,
844 West Vermont Street,
Chicago 43, Illinois.

Dear Mr. Daly:

With reference to your letter of March 15, 1957, I regret that I can not under my statutory powers apply for Leave on behalf of the State of Illinois to intervene in the litigation brought by you against the Federal Communications Commission, which is now pending in the United States Court of Appeals for the Seventh Circuit as No. 11946

Very truly yours,
/s/ Latham Castle
Attorney General

C
LC:GB:ak

To the Honorable Judges of the
United States Court of Appeals for the Seventh Circuit

The undersigned, being first duly sworn, on oath deposes and says: That on February 8, 1956, he was a member of the Illinois State Electoral Board, the duly constituted authority charged by law with certifying legally qualified candidates to the County Clerks of Illinois, for the Primary Election held on April 10, 1956.

That on the aforementioned date of February 8, 1956, he did concur in certifying the name of Lar (America First) Daly, as a legally qualified candidate for President of the United States, on the Republican ticket, to all

Illinois County Clerks, for printing on the official ballots and voting machines in all Counties of Illinois; that the name of Lar (America First) Daly did appear on all Illinois ballots for said Primary Election and that he was voted for directly by the Illinois electorate on April 10, 1956, for the office of President of the United States, and that the votes he received as the result of said Primary Election are listed in the official tally and canvass of votes, maintained in the office of the Illinois Secretary of State.

That as the result of such certification as a legally qualified candidate on February 8, 1956, Lar (America First) Daly remained and continued as a legally qualified candidate, according to the laws of the sovereign state of Illinois, up to and including the date of the April 10, 1956 Primary Election.

....., Member
Illinois State Electoral Board
as constituted on February 8, 1956

Subscribed to and sworn to before me
this ..... day of March, 1957.

.....
Notary Public

My commission expires .....

March 15, 1957

Attorney General Edwin K. Steers
Capitol Bldg.
Indianapolis, Indiana

Attorney General Steers:

I thank you for your encouraging letter of March 1, 1957. You may remember me for my attempt to file General Douglas MacArthur for President of the United States, on the Indiana ballot, for the General Election of November, 1952. At present, I am engaged in court action against the Federal Communications Commission in the United States Court of Appeals in Chicago. A copy of my Petition for Review is enclosed. Also, a copy of a letter sent to every U. S. Senator and Congressman.

I seek a Declaratory Judgment from the Court that I was a legally qualified candidate for President of the United States, on the Republican ticket, for the May 8, 1956, Indiana Primary Election. On April 3, 1956, the Indiana Secretary of State, as the duly constituted authority under the laws of Indiana, certified me as a legally qualified candidate to all Indiana Circuit Court Clerks, for the May 8, 1956 Primary.

My whole case before the Court is based on the principle of States Rights, especially as they pertain to the right of the 48 States of this Union to be supreme in all matters pertaining to Elections, held within their state borders. In this cause, I am fighting for the sovereign rights of the State of Indiana, the state of my birth and the right of one of its duly constituted authorities, viz., the Secretary of State, to be preeminent over the rulings of a Federal Regulatory Agency and the opinions of private business concerns, viz., the four major Television and Radio networks, NBC, CBS, ABC, and MBS.

On April 6, 1956, in response to a telegram from the Federal Communications Commission, the Indiana Secretary of State replied by wire, stating in effect that Lar Daly was a legally qualified candidate, according to Indiana Law, for the May 8, 1956 Primary Election. Article X of the Amendments to the Federal Constitution (Bill of Rights) specifically guarantees to the States the right to be supreme in all matters pertaining to Elections and the Franchise.

Enclosed are two copies of a Deposition. I ask that you sign one, have it notarized, and return it to me at your earliest possible convenience. I want to present it to the Court to bolster my Petition for Rehearing, which must be filed soon. On March 7, 1957, the Court allowed the FCC's Motion to Dismiss my Petition for Review. My Petition for Rehearing is a final step in the Appeals Court before the case goes to the U. S. Supreme Court on Certiorari.

A copy of my Petition for Review, Congressional Letter, and a personal letter similar to this, has been sent to Lieutenant Governor Crawford F. Parker, who was Secretary of State of Indiana on April 3, 1956, along with two copies of the Deposition. I have asked him to sign one copy and return it to me. Governor Harold Handley also has received copies of all correspondence. On behalf of the citizens of Indiana, I ask you to enter the case as Intervenor in my behalf. It would serve as a protest and rebuke to the timisity of a Federal Regulatory Agency, which apparently is nothing but a "Servant-Boy" for the Television and Radio networks they are supposed to regulate.

Sincerely yours,
Lar Daly

(Letterhead of Edwin K. Steers, Attorney General, State of Indiana)

March 19, 1957

Mr. Lar J. Daly, President
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

I have received your letter of March 15, 1957, and have carefully read the letter together with the enclosures thereto.

As you know, the office of the Attorney General of the State of Indiana is one created and regulated by statute, prescribed by the Legislature. While it is true that the Attorney General is directed, by statute, to prosecute and defend all suits that may be instituted by or against the State of Indiana, and he is required further to attend to the interests of the State in all actions in which the State is interested in the Supreme Court of this State, the Attorney General of this State cannot interpose himself as an intervenor into an action between a private citizen and an agency of the Federal Government, and especially the Attorney General of the State of Indiana could not intervene in behalf of one of the existing parties to the action.

In addition to the matter of intervention, I could not, acting either as a private citizen or as Attorney General, execute the enclosed affidavit for in neither capacity did I have personal knowledge of the matter therein described. On the other hand, the records of the Secretary of State for the State of Indiana are official and public records of the information sought by the affidavit. I understand that you have already requested and received a certified copy of the Secretary of State's telegrams to you of April 6, 1956.

Certainly nothing from this office could make that certification any more or less official.

I shall remain most happy to be of any assistance to you which might be possible under the law and the circumstances. I am indeed regretful to have not been of more assistance to you in the immediate circumstances.

Very truly yours,
/s/ Edwin K. Steers,
Edwin K. Steers,
Attorney General of Indiana

EKS/slw

To the Honorable Judges of the
United States Court of Appeals for the Seventh Court

The undersigned, being first duly sworn on oath, deposes and says: That on April 3, 1956, he was Attorney General of the State of Indiana and does hold the same office as of this date; that as Attorney General he is empowered by Indiana Law to advise and render opinions to the Indiana Secretary of State, the duly constituted authority, charged by law with certifying the names of all legally qualified candidates to the Circuit Court Clerks of the State of Indiana, for the Primary Election held on May 8, 1956.

That on the aforementioned date of April 3, 1956, he did have knowledge of the certification, by the Indiana Secretary of State, of the name of Lar Daly, as a legally qualified candidate for President of the United States, on the Republican ticket, for the May 8, 1956 Primary Election, to all Indiana Circuit Court Clerks; that the name of Lar Daly did appear on Indiana Counties ballots for said Primary Election; that he was voted for directly by the

Indiana electorate on May 8, 1956 for the office of President of the United States; and that the votes he received as the result of said Primary Election are listed in the official canvass of votes, maintained in the office of the Secretary of State.

That as the result of such certification as a legally qualified candidate by the Indiana Secretary of State on April 3, 1956, Lar Daly remained and continued as a legally qualified candidate, according to the laws of the sovereign State of Indiana, up to and including the date of the May 8, 1956 Primary Election.

.....

Edwin K. Steers, Attorney General
of the State of Indiana
on April 3, 1956, and as of this date.

Subscribed and sworn to before me
a Notary Public this .....
day of March, 1957.

.....

Notary Public

My Commission expires.....

EXHIBIT NO. 1.

Below is exact copy of letter sent to all 48 States' Attorneys' General same date.

Chicago, Illinois
February 27, 1957

Attorney General Eugene Cook
State of Georgia
Capitol Bldg.
Atlanta, Georgia

Mr. Attorney General:

I would like your opinion on the following Constitutional proposition, at your earliest convenience:

The Constitution of the United States of America, Article X of the Amendments to the Constitution, states:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article I, Section 8 of the Constitution itself states the specific powers which the Congress of the U.S. shall possess. Nowhere in such Section 8 of Article I does the Constitution grant the Congress any powers pertaining to Elections, or any matters relevant thereto.

The authority retained by the constituent States prevails over a broad field of government, including all powers not explicitly or implicitly vested in the central authority by the Constitution and excepting those powers expressly forbidden the States by the Constitution.

Among the powers retained by the States are: "the qualified control of election and suffrage." So far as I know, no competent authority has ever denied or challenged the right of the sovereign states to be supreme in all matters pertaining to Elections within their State borders.

Now, therefore, if such be the Constitutional fact of the matter, then the duly constituted authority of a sovereign state also possesses the supreme right to say who is, and who is not, a certified legally qualified candidate for any election held within its state borders.

It must follow, logically, then, and as a matter of basic common sense, that all individuals and agencies, private or public, whether Federal, State, County or local, must accept such decision as absolute, final, and non-arguable; and must be guided and governed accordingly, particularly if presented with the problem of determining whether an American citizen is, or is not, "a legally qualified

candidate", within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47.

I ask you, Mr. Attorney General, do you agree with me, or not, that the sovereign States of this Union, under Federal Constitutional Law, are the sole and supreme authority as to who is, and who is not, "a legally qualified candidate", for any election held within its State borders?

Respectfully yours,

.....

LAR DALY
844 West Vermont Street
Chicago 43, Illinois

THE DEPARTMENT OF LAW
STATE OF GEORGIA
ATLANTA

March 5, 1957

(State of Georgia Seal)
Eugene Cook, The Attorney General

Mr. Lar Daly, President
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

I am pleased to acknowledge your letter to the Attorney General which has been referred to me due to his engagement in the trial of cases.

The State Department of Law can only give an opinion to the Governor and to the heads of the various departments of the State on matters in which the State is a party at interest, and therefore I cannot give you an opinion in a private capacity.

I am pleased to give you my personal and unofficial views relative to the elective franchise, which are that the elective franchise is a power sovereign in the State and which has not been delegated under constitutional processes to the Federal Government, and, of course, you are familiar with the provision of the Constitution of the United States, which is as follows:

> "Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

With kindest regards, I am

Yours sincerely,
/s/ A. J. Hartley,
A. J. Hartley,
Asst. Atty. General.

AJH/stg

(Letterhead of)

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
MONTGOMERY 4, ALABAMA

March 4, 1957

(Alabama Great Seal)
Mr. Lar Daly
American Stool and Chair Company
844 Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

This acknowledges receipt of your letter under date of February 26, 1957, and the contents therein have been carefully noted.

This office is prohibited by law from rendering official opinions to private individuals.

However, the legal points raised in your letter have been duly considered, and I certainly want to tell you that I am personally in accord with the conclusion that you have reached. I feel sure that the Attorney General, Mr. Patterson, would also concur in your expressions.

Both Mr. Patterson and myself recently testified before the House Judiciary Committee in Washington regarding the so-called civil rights legislation which is to come up at this session of Congress. We both made expressions in bitter opposition to this proposed legislation, and I believe both of us pointed out that the control of elections, the qualification of registered voters, and the requirements of legally qualified candidates have traditionally been vested in the states. I feel very strongly that the proposed legislation, at least, as it is now drafted, is unconstitutional.

This office appreciates your very interesting letter and many of us here in the South wish you could get your thoughts across to your United States Senator Paul Douglas.

Very truly yours,
John Patterson
Attorney General
By—
/s/ MacDonald Gallion
MacDonald Gallion
Senior Assistant Attorney
General

MacG/ar

EXHIBIT NO. 2.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

FCC 54-1155
3105

PUBLIC NOTICE

September 8, 1954

USE OF BROADCAST FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

In accordance with the mandate of section 315 of the Communications Act of 1934, as amended, the Commission on September 2, 1954, revised its rules relating to rates charged for political broadcasts coming within the provisions of section 315 (Docket No. 11092). We believe it is appropriate, at this time, as an aid to licensees in handling various questions which may arise under section 315 of the act to recapitulate in this document the provisions of the act and the Commission's rules adopted in implementation thereof, together with a brief summary of some of the more important questions which have been raised by interested parties in recent years with respect to the obligations of licensees under this section and the Commission's determinations thereon.

The information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field. It is rather a codification of the determinations of the Commission with respect to the problems which have been presented to it and which appear likely to be involved in future campaigns. The purpose of this report is the clarification of licensee responsibility and course of action when situations discussed herein are encountered. In this way, resort to the Commission may be obviated in many instances, and time—which is of such importance in political campaigns—will be conserved. We do not mean to preclude inquiries to the Commission when there is a bona fide doubt as to a licensee's obligations under section 315. But it is believed that the following discussion will, in many instances, remove the need for such inquiries and that licensees will be able to take the necessary prompt action in these cases involving election campaigns in accordance with the interpretations and positions set forth below.

It is to be emphasized that this discussion relates solely to obligations of broadcast licensees under section 315 of the Communications Act and is not intended to treat with the wholly separate question of the treatment by broadcast licensees in the public interest of political or other controversial programs or discussions not falling within the specific provisions of that section. With respect to the responsibilities of broadcast stations for insuring fair and balanced presentation of programs not coming within section 315, but relating to important public issues of a controversial nature including political broadcasts, licensees are referred to the Commission's Report, "Editorializing by Broadcast Licensees" (Release No. 215, June 2, 1949) and the cases cited therein. In this respect it is particularly important that licensees recognize that the special obligations imposed upon them by the provisions of section 315 of the Communications Act with respect to certain types of political broadcasts do not in any way limit the applicability of general public interest concepts to political broadcasts not falling within the provisions of section 315 of the Communications Act. On the contrary, in view of the obvious importance of such programming to our system of representative government it is clear that these precepts, as set forth in the Report referred to above are of particular applicability to such programming.

We have adopted a question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible,[1] references to Commission decisions or rulings are made so that the researcher may, if he desires, profit by the more thorough or expansive statement of the Commission's position found in such decisions. Copies of rulings not otherwise available may be found in a "Political Broadcast" folder kept in the Commission's Public Reference Room.

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[1] A few of the questions taken up within have been presented to the Commission informally—that is, through telephone conversations or conferences with station representatives. They are set out in this Report because of the likelihood of their reoccurrence and the fact that no extended Commission discussion is necessary to dispose of them; the answer in each case is clear from the language of section 315.

I. *The Statute.* Section 315 of the Communications Act of 1934, as amended, provides as follows:

SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

II. *The Commission's rules and regulations with respect to political broadcasts.* The Commission's rules and regulations with respect to political broadcasts coming within section 315 of the Communications Act are set forth in §§ 3.190 (AM), 3.290 (FM), 3.590 (Non-Commercial Educational FM), and 3.657 (TV), respectively. These provisions are identical (except for elimination of any discussion of charges in § 3.590 relating to non-commercial educational FM stations) and read as follows:

Broadcasts by candidates for public office—(a) *Definitions.* A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, state or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who

(1) Has qualified for a place on the ballot or

(2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and

(i) Has been duly nominated by a political party which is commonly known and regarded as such, or

(ii) Makes a substantial showing that he is a bona fide candidate for nomination of office, as the case may be.

(b) *General requirements.* No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all such other candidates for that office to use such facilities; provided, that such licensee shall have no power of censorship over the materal broadcast by any such candidate.

(c) *Rates and practices.* (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) *Records; inspection.* Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted.

In addition, the attention of licensees is directed to the provisions of §§ 3.189 (b), 3.289 (b) and 3.654 (b) which provide in identical language:

(b) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the boadcasting of such program, an announcement shall be made both at the beginning and conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program: provided, however, that only one such announcement need be made in the case of any such program of five minutes' duration or less, which announcement may be made either at the beginning or the conclusion of the program.

III. *Programs coming within section 315.* In general, any use of broadcast facilities by a legally qualified candidate for public office, imposes an obligation on licensees to afford equal opportunities to all other such candidates for the same office.

A. *Types of users.*

1. Q. Does section 315 apply to one speaking for or on behalf of the candidate, as contrasted with the candidate himself?

A. No. The section applies only to legally qualified candidates. Candidate A has no legal right under section 315 to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (Felix v. Westinghouse Radio Stations 182 F. 2d 1, cert. den. 333 U. S. 876).

2. Q. Where time has been afforded to a party for political talks by non-candidates, must a request for time by spokesmen for another party be honored under section 315?

A. No. Section 315 affords a personal right to candidates only and is not concerned with parties, as such. Idem.

3. Q. Do the provisions of section 315 require stations to afford equal opportunities in the use of their facilities in support of or in opposition to a public question to be voted upon in any election?

A. No. The language and legislative history of section 315 clearly limit the application of this section to legally qualified candidates for public office.

B. *What constitutes a "use" of broadcast facilities entitling opposing candidates to equal opportunities?*

4. Q. If a legally qualified candidate secures air time but does not discuss matters directly related to his candidacy, is this a use of facilities under section 315?

A. Yes. Section 315 does not distinguish between the uses of broadcast time by a candidate, and the licensee is not authorized to pass on requests for time by opposing candidates on the basis of the licensee's evaluation of whether the original use was or was not in aid of a candidacy. (WMCA, Inc. 7 R. R. 1132.)

5. Q. Must a broadcaster give equal time to a candidate whose opponent has broadcast in some other capacity than as a candidate?

A. Yes. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection, and his opponent must be given equal opportunity for time on the air. Any "use" of a station by a candidate, in whatever capacity, entitles his opponent to "equal opportunities." (Station KNGS, 7 R. R. 1130.)

6. Q. If a candidate appears on a variety program for a very brief bow or statement, are his opponents entitled to "equal opportunities" on the basis of this brief appearance?

A. Yes. All appearances of a candidate, no matter how brief or perfunctory, are a "use" of a station's facilities within section 315.

7. Q. If a candidate is accorded station time for a speech in connection with a ceremonial activity or other public service is an opposing candidate entitled to equal utilization of the station's facilities?

A. Yes. Section 315 contains no exception with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service." It follows that the station's broadcast of the candidate's speech was a "use" of the facilities of the station by a legally qualified candidate giving rise to an obligation by the station under section 315 to afford equal opportunity to other legally qualified candidates for the same office. (Letter to CBS (WBBM), dated October 31, 1952; Letter to KFI, dated October 31, 1952.)

8. Q. If a station arranges for a debate between the candidates of two parties, or presents the candidates of two parties in a press conference format or so-called forum program, is the station required to make equal time available to other candidates?

A. Yes. The appearance of candidates on the above types of programs constitutes a "use" of the licensee's facilities by legally qualified candidates and, therefore, other candidates for the same office are entitled to "equal opportunities." (Letter to Harold Oliver, dated October 31, 1952; Letter to Julius F. Brauner, dated October 31, 1952.)

9. Q. Are acceptance speeches by successful candidates for nomination for the candidacy of a particular party for a given office, a use by a legally qualified candidate for election to that office?

A. Yes. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination. (Progressive Party, 7 R. R. 1300.)

IV. *Who is a legally qualified candidate?*

10. Q. How can a station know which candidates are "legally qualified"?

A. The determination as to who is a legally qualified candidate for a particular public office within the meaning of section 315 and the Commission's rules must be determined by reference to the law of the state in which the election is being held. In general, a candidate is legally qualified if he can be voted for in the state or district in which the election is being held, and, if elected, is eligible to serve in the office in question.

11. Q. Need a candidate be on the ballot to be legally qualified?

A. Not always. The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons, or their electors can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under section 315. (Sections 3.190, 3.290, 3.657; Socialist Labor Party, 7 R. R. 766; Columbia Broadcasting System, Inc., 7 R. R. 1189; Press Release of November 26, 1941 (Mimeo 55732).)

12. Q. May a station deny a candidate "equal opportunity" because it believes that the candidate has no possibility of being elected or nominated?

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Columbia Broadcasting System, Inc., 7 R. R. 1189.)

13. Q. May a person be considered to be a legally qualified candidate where he has made only a public announcement of his candidacy and has not yet filed the required forms or paid the required fees for securing a place on the ballot in either the primary or general elections?

A. The answer depends on applicable state law. In some states persons may be voted for by electorate whether or not they have gone through the procedures required for getting their names placed on the ballot

itself. In such a state, the announcement of a person's candidacy—if determined to be bona fide—is sufficient to bring him within the purview of section 315. In other states, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. The applicable state laws and the particular facts surrounding the announcement of the candidacy are determinatives. (Letter to Senator Earle C. Clements, dated February 2, 1954.)

14. Q. Must a station make time available upon demand to a candidate of the Communist Party, or a candidate who is a member of the Communist Party, if it has afforded time to that candidate's opponents for the office in question?

A. If the person involved is a legally qualified candidate for the office he is seeking, Section 315 requires "that equal opportunities" be afforded him. It will be recognized that who is a legally qualified candidate is dependent upon federal, state, and local law pertaining to the elective process and is not based upon provisibn of the Communications Act or the Rules of the Commission.

The question of the specific applicability of these principles, in the light of the enactment of the Communist Control Act of 1954, to candidates of the Communist Party or who are members of the Communist Party has not yet been determined.

15. Q. When is a person a legally qualified candidate for nomination as the candidate of a party for President or Vice-President of the United States?

A. In view of the fact that a person may be nominated for these offices by the conventions of his party without having appeared on the ballot of any state having presidential primary elections, or having any pledged votes prior to the convention, or even announcing his willingness to be a candidate, no fixed rule can be promulgated in answer to this question. Whether a person so claiming is in fact a bona fide candidate will depend on the particular facts of each situation, including consideration of what efforts, if any, he has taken to secure delegates or preferential votes in state primaries. It cannot, however, turn on the licensee's evaluation of the claimant's chances for success. (Letter of May 28, 1952 to Julius F. Brauner)

V. When are candidates opposing candidates?

16. Q What public offices are included within the meaning of section 315?

A. Under the Commission's rules, section 315 is applicable to both primary and general elections, and public offices include all offices filed by special or general election on a municipal, county, state or national level as well as the nomination by any recognized party as a candidate for such an office.

17. Q. May the station under section 315 make time available to all candidates for one office and refuse all candidates for another office?

A. Yes. The "equal opportunity" requirement of section 315 is limited to all legally qualified candidates for the same office.

18. Q. If the station makes time available to candidates seeking the nomination of one party for a particular office, does section 315 require that it make equal time available to the candidates seeking the nomination of other parties for the same office?

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and therefore, insofar as section 315 is concerned, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. (KWFT, Inc., 4 R. R. 885; Letter to Arnold Petersen, May 13, 1952; Letter to WCDL, April 3, 1953.)

19. Q. If the station makes time available to all candidates of one party for nomination for a particular office, including the successful candidate, may candidates of other parties in the general election demand an equal amount of time under section 315?

A. No. For the reason given above. (KWFT, Inc., 4 R. R. 885.)

VI. What constitutes equal opportunities?

20. Q. Generally speaking, what constitutes equal opportunities?

A. Under section 315 and §§ 3.190, 3.290, and 3.657 of the Commission's rules, no licensee shall make any discrimination in charges, practices, regulations, facilities, or services rendered to candidates for a particular office.

21. Q. Is a licensee required or allowed to give time free to one candidate where it had sold time to an opposing candidate?

A. The licensee is not permitted to discriminate between the candidates in any way. With respect to any particular election it may adopt a policy of selling time, or of giving time to the candidates free of charge, or of giving them some time and selling them additional time. But whatever policy it adopts it must treat all candidates for the same office alike with respect to the time they may secure free and that for which they must pay.

22. Q. Is a station's obligation under section 315 met if it offers a candidate the same amount of time an opposing candidate has received, where the time of the day or week afforded the first candidate is superior to that offered his opponent?

A. No. The station in providing equal opportunities must consider the desirability of the time segment allotted as well as its length. And while there is no requirement that a station afford candidate B exactly the same time of day on exactly the same day of the week as candidate A, the time segments offered must be comparable as to desirability.

23. Q. Is it necessary for a station to advise a candidate or a political party that time has been sold to other candidates?

A. No. The law does not require that this be done. If a candidate inquires, however, the facts must be given him. It should be noted here that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (Sections 3.190 (d), 3.290 (d), 3.657 (d).)

24. Q. If one political candidate buys station facilities more heavily than another, is a station required to call a halt to such sales because of the resulting unbalance?

A. No. Section 315 requires only that all candidates be afforded an equal opportunity to use the facilities of the station. (Letter to Mrs. M. R. Oliver, dated October 23, 1952.)

25. Q. If the candidate has received free time for a period of time and subsequently a second candidate announces his candidacy, is the second candidate entitled to equal facilities retroactive to the date when the first candidate announced his candidacy?

A. Normally yes. Once the station has made time available to one qualified candidate, its obligation to provide equal facilities to future candidates begins. A candidate cannot, however, delay his request for time and expect to use the "equal opportunities" provision to force a station to turn over most of the last few pre-election days to him in order to "saturate" pre-election broadcast time. (Letter to Congressman Hunter, dated May 28, 1952; Letter to Congressman Frelinghuysen, dated March 2, 1954.)

26. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time to a candidate whose opponent has already been granted time, on the basis of its established policy of not cancelling commercial programs in favor of political broadcasts?

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunity" requirement of section 315. (Stephens Bctg. Co., 3 R. R. 1.)

27. Q. If one candidate has been nominated by Parties A, B, and C, while a second candidate for the same office is nominated only by Party D, how should time be allocated as between the two candidates?

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of section 315 require that equal opportunity be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letter to Thomas W. Wilson, dated October 31, 1946.)

28. Q. If a station broadcasts a program sponsored by a commercial advertiser which includes one or more qualified candidates as speakers or guests, what are its obligations with respect to affording equal opportunities to other candidates for the same office?

A. If candidates are permitted to appear, without cost to themselves, on programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time, also at no cost. (Letter to Senator Monroney, dated October 9, 1952.)

29. Q. Where a candidate for office in a state or local election appears on a national network program, is an opposing candidate for the same office entitled to equal facilities over stations which carried the original program and serve the area in which the election campaign is occurring?

A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (Letter to Senator Monroney, dated October 9, 1952.)

30. Q. Where a candidate appears on a particular program—such as a regular series of forum programs, are opposing candidates entitled on demand to appear on the same program?

A. Not necessarily. The mechanics of the problem of "equal opportunities" must be left to resolution of the parties. And while factors such as the size of the potential audience because of the appearance of the first candidate on an established or popular program might very well be a matter for consideration by the parties, it cannot be said, in the abstract, that equal opportunities could only be provided by giving opposing parties time on the same program. (Letter to Harold Oliver, dated October 31, 1952; Letter to Julius F. Brauner, dated October 31, 1952.)

EXHIBIT NO 3.

THE ORGANIZATION AND PROCEDURES OF THE FEDERAL REGULATORY COMMISSIONS AND AGENCIES AND THEIR EFFECT ON SMALL BUSINESS

WEDNESDAY, MARCH 21, 1956

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 1 ON FEDERAL REGULATORY AGENCIES,
OF THE SELECT COMMITTEE TO CONDUCT A STUDY AND
INVESTIGATION OF THE PROBLEMS OF SMALL BUSINESS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 9:30 a. m., in room 362, House Office Building, Washington, D. C., Hon. Joe L. Evins (chairman of the subcommittee) presiding.

Present: Representatives Evins (presiding), Multer, Yates, and McCulloch.

Also present: Everette MacIntyre, staff director and general counsel, George L. Arnold and Irving Maness, assistant counsel; Clarence D. Everett, staff member; Victor P. Dalmas, assistant to minority members.

Mr. EVINS. The committee will come to order.

This morning I should like to submit for the record a letter received from the Chairman of the Federal Communications Commission, Mr. George C. McConnaughey. It is in response to a press statement which I made with reference to this inquiry.

I am going to ask that both my statement and Mr. McConnaughey's letter be printed in the record together. There will be some further comment upon some of the statements made in this letter regarding the misunderstanding of perhaps the use of the word "networks."

If one wishes to amend that to use the word "industry," there would be no objection, or "those regulated."

(The letter and the press release referred to are as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., March 19, 1956.

Hon. JOE L. EVINS,
Chairman, Subcommittee No. 1, House Select Committee on Small Business, House of Represenatives, Washington, D. C.

MY DEAR CONGRESSMAN EVINS: On my return to my office this morning, I was astounded to read the press release that you had issued the afternoon of March 15, 1956, which suggests that in our conference the week previous I had indicated that networks had control over the staff of the Federal Communications Commission. Your press release states "these allegations by the FCC to the effect that the networks have the power to hire and fire those who do not vote or speak in the networks' interests are serious matters and demand an immediate and thorough investigation." In order to set the record straight, I have searched my recollection and consulted with the two members of my staff who were present. My staff's recollection and mine are quite clear that you never discussed or mentioned any matter relating to the networks' alleged control of FCC staff, nor did I.

As you will recall you stated that you had heard rumors about the power of the Chairman of this Commission, because of his ability to select, promote or remove staff people, to get opinions and recommendations from the staff so as to carry out his own personal policies. In response to this I pointed out that rather than being a powerful Chairman with respect to control over staff in this regard, I had extremely limited powers and that all personnel actions were subject to the control of the full Commission. It was only in this connection that I mentioned I was perhaps the weakest Chairman of any of the regulatory agencies with respect to my powers over personnel and the establishment of policy.

Neither I nor any of my staff can recall any statement by Mr. L'Heureux to the effect that if the names of staff "were known in instances where they had taken positions unfavorable to the networks, the networks would see to it that such staff personnel were fired." Mr. L'Heureux did point out that agencies were generally reluctant to release staff opinions or interoffice memorandums because, if such information were made public, it might invite a situation where staff personnel would give opinions with an eye to newspaper publicity and affected regulated industries might tend to place pressures upon personnel, either through recourse to members of Congress or otherwise.

In view of the fact that the subject press release mentioned all members of your subcommittee and since they were not present during our conference, I am forwarding a copy of this letter to both Representative Yates and Representative McCulloch.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

(Mr. Evins comments on the contents of the above letter appear on page 751.)

STATEMENT OF HON. JOE L. EVINS, MEMBER OF CONGRESS FROM TENNESSEE

Representative Joe L. Evins (Democrat, Tennessee) today issued subpenas for records of RCA, NBC and CBS to investigate complaints that major networks are controlling policies of the Federal Communications Commission.

Mr. Evins, who is chairman of Subcommittee No. 1 of the House Select Committee on Small Business, of which Hon. Sidney R. Yates (Democrat, Illinois) and Hon. William M. McCulloch (Republican, Ohio) are members, said witnesses and records will be called before the committee at 9:30 a. m., March 20, when his subcommittee resumes investigation into the practices and independence of regulatory agencies.

Mr. Evins said the subpenas were issued on the basis of complaints made to the committee that the networks controlled FCC policies through intimidation of personnel in the Government agency. He pointed out that any control or degree of undue influence by the networks on the policies of FCC would appear to adversely affect small business and be contrary to the public policy and the law.

Recently, Representative Evins conferred with Mr. George C. McConnaughey, Chairman of the Federal Communications Commission, Mr. Robert L'Heureux, assistant to Mr. McConnaughey, and Mr. Warren E. Baker, General Counsel of the Federal Communications Commission, at which time those officials of the FCC lent their voices to information previously received by the House Small Business Committee relating to control over the staff of the FCC. In speaking of that conference Representative Evins said:

"During this conference Chairman McConnaughey informed the committee he was perhaps the 'weakest' chairman of any of the regulatory agencies with respect to his powers over personnel and the establishment of policy.

"He insisted that he did not have even the power to hire and fire. At the same conference Mr. L'Heureux indicated fear of reprisal from members of the industry which FCC is supposed to be regulating. Mr. L'Heureux stated the names of staff personnel who prepared specific memoranda should not be divulged because if their names were known in instances where they had taken positions unfavorable to the networks, the networks would see to it that such staff personnel were fired.

"These allegations by the FCC to the effect that the networks have the power to hire and fire those who do not vote or speak in the networks' interest are serious matters and demand an immediate and thorough investigation. Therefore, I have issued the subpenas as one of the steps in our resumption of hearings in this continuing investigation of regulatory agencies and in an effort to serve the interests of the public and small business."

Thank you very much.
Senator POTTER. Thank you. Are there any other questions of Mr. Cottone? We will hear from Mr. Burton and Mr. Craig at this time.

Mr. EVINS (continuing). The committee will call as its first witnesses this morning Mr. Thomas Garland Tinsley, Jr., of Baltimore, Md., and Mr. Irvin Abeloff, of Richmond, Va.

Mr. MCCULLOCH. Off the record, Mr. Chairman.

(Discussion off the record.)

Mr. EVINS. On the record.

With reference to my statement and Mr. McConnaughey's reply, I would add that this conference was held at the request of Mr. McConnaughey, and if he did not use the word "networks," certainly he used the words "interests regulated" and "industry regulated" which to my mind means the same thing.

During the course of our discussion, Mr. McConnaughey wanted to assure me that he was not a strong Chairman. I think his statement has indicated his admission of the use of the words "one of the weakest Chairmen" of any of the regulatory agencies.

He certainly discussed his lack of power of hiring and firing personnel at the FCC. It is clear to me this morning that the Chairman of the FCC has a clear recollection of that part of our discussion.

The Chairman seems not to recall clearly that part of our discussion dealing with the fear of reprisal against members of the staff of the FCC who speak out or take positions against the interests of the industries regulated.

While Mr. McConnaughey may perhaps have a lapse of memory in this respect, I have not. I clearly recall the discussion that dealt with this fear of reprisal.

Mr. L'Heureux stated that this fear of reprisal was one of the reasons why the FCC was reluctant to divulge to the members of this subcommittee the names of the staff members who had written memoranda or taken particular positions concerning contentions before the Commission.

Mr. McConnaughey, the chairman of the FCC, quickly concurred in the views expressed by Mr. L'Heureux in this regard.

My statement, Mr. McConnaughey's statement, and my comments will be printed in the record. (See pp. 727, 728, 751.)

Now, Mr. MacIntyre, you may proceed.

Mr. Tinsley, do you solemnly swear the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TINSLEY. Yes, sir.

Mr. EVINS. And you are Mr. Abeloff?

Mr. ABELOFF. I am, sir.

Mr. EVINS. You are counsel?

Mr. ABELOFF. I am Mr. Abeloff.

Mr. PLOTKIN. And I am counsel.

Mr. EVINS. What is your name?

Mr. PLOTKIN. Mr. Plotkin.

Mr. EVINS. Mr. Plotkin and Mr. Abeloff.

VII. What limitations can be put on the use of facilities by a candidate?

31. Q. May a station delete material in a broadcast under section 315 because it believes the material contained therein is or may be libelous?

A. No. Any such action would entail censorship which is expressly prohibited by section 315 of the Communications Act. (Port Huron Bctg. Co., 4 R. R. 1; WDSU Bctg. Co., 7 R. R. 769.)

32. Q. If a legally qualified candidate does make libelous or slanderous remarks is the station liable therefor?

A. The Commission has expressed its opinion in Port Huron Bctg. Co., 4 R. R. 1., that licensees not directly participating in the libel might be absolved from any liability they might otherwise have under state law, because of the operation of Section 315 which precludes them from preventing its utterance. But this is a matter which in the absence of any amendment to the law will have to be definitively decided by the courts. So far there have been no clear judicial holdings on this matter, but only dicta or lower court opinions supporting both positions. It should be noted, however, that many states have passed laws which wholly or partially exempt licensees from liability under these circumstances.

33. Q. If a candidate secures time under section 315, must he talk about a subject directly related to his candidacy?

A. No. The candidate may use the time as he deems best. To deny a person time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by section 315 (WMCA, Inc., 7 R. R. 1132).

34. Q. If a station makes time available to an office holder who is also a legally qualified candidate for re-election and the office holder limits his talks to non-partisan and informative material, may other legally qualified candidates who obtain time be limited to the same subjects or the same type of broadcast?

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Letter to Congressman Allen Oakley Hunter, May 28, 1952.)

35. Q. May a station require an advance script of a candidate's speech?

A. Yes, provided that the practice is uniformly applied to all candidates for the same office using the station's facilities, and the station does not undertake to censor the candidate's talk. (Letter of July 9, 1952, to H. A. Rosenberg, Louisville, Ky.)

36. Q. May a station have a practice of requiring a candidate to record his proposed broadcast at his own expense?

A. Yes. Provided again that the procedures adopted are applied without discrimination as between candidates for the same office and no censorship is attempted. (Letter of July 9, 1952, to H. A. Rosenberg, Louisville, Ky.)

VIII. What rates can be charged candidates for programs under section 315?

37. Q. May a station charge premium rates for political broadcasts?

A. No. Section 315, as amended, provides that the charges made for the use of a station by a candidate "shall not exceed the charges made for comparable use of such stations for other purposes."

38. Q. May a station with both "national" and "local" rates charge a candidate for local office its "national" rate?

A. No. Under §§ 3.190, 3.290 and 3.557 of the Commission's Rules a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that within which persons may vote for the particular office for which such person is a candidate.

39. Q. Is a political candidate entitled to receive discounts?

A. Yes. Under §§ 3.190, 3.290 and 3.557 of the Commission's Rules political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within section 315 as the station may choose to give on a non-discriminatory basis.

40. Q. If candidate A purchases ten time segments over a station which offers a discount rate for purchase of that amount of time, is candidate B entitled to the discount rate if he purchases less time than the minimum to which discounts are applicable?

A. No. A station is under such circumstances only required to make available the discount privileges to each legally qualified candidate on the same basis.

41. Q. If a station has a "spot" rate of two dollars per "spot" announcement, with a rate reduction to one dollar if 100 or more such "spots" are purchased on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk time contract to utilize five of these spots at the one dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same one dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Letter to Senator Monroney, dated October 16, 1952.)

42. Q. Where a group of candidates for different offices pool their resources to purchase a block of time at a discount, and an individual candidate opposing one of the group seeks time on the station, to what rate is he entitled?

A. He is entitled to be charged the same rate as his opponent, since the provisions of section 315 run to the candidates themselves and they are entitled to be treated equally with their individual opponents. (Report and Order, Docket 11092.)

EXHIBIT NO. 4.

KERO–TV, as the CBS television network affiliate in Bakersfield. I now find that this map was somewhat premature. The fact is that we were at the time of my testimony contemplating affiliating with KBAK–TV, the UHF station, since it fitted in very well with KFRE–TV, minimizing overlap. Subsequently, the CBS television network has made the formal determination to seek a primary affiliation with KBAK–TV.

In any event, I should note that the substance of my answer to you—that our affiliation with KFRE–TV "improves the service of the network"—remains true.

Station KERO–TV in Bakersfield is a VHF station which is a primary affiliate of the NBC television network and only a secondary affiliate of the CBS television network. While KERO–TV carries 8 hours per week of nighttime CBS television network programing and 14¾ hours of daytime, there are an additional 8 hours nighttime commercial programs per week and 7 daytime ordered by CBS television network advertisers for KERO–TV, which that station is not clearing.

Because KERO–TV is a primary affiliate of the NBC television network, the question of overlap of its coverage area by KFRE–TV's coverage area did not play a critical part in the determination to affiliate with KFRE–TV. The CBS television network does not normally take into account the question of overlap with stations which carry some of the network's programs but which are primary affiliates of another network.

Further, as our files relating to KFRE–TV, which you have examined, indicate, it was the opinion of both the research department and the engineering department of the CBS television network that KFRE–TV would considerably strengthen our coverage in the area. You will recall that in his testimony while I was on the stand, Mr. Lodge pointed out that measurement by whole counties minimizes the effect of the gain achieved by shifting to KFRE–TV. The research department estimated that KFRE–TV gives us coverage of an additional 77,100 families not covered by KJEO–TV. It was also the opinion of the research and engineering departments that there would be improved service rendered by KFRE–TV within KJEO–TV's accredited area—even within Fresno itself.

In summary, our decision to affiliate with KFRE–TV was based on our judgment that there would be improved service to more people without significantly increasing the problem of overlap with any existing primary CBS television network affiliate.

I trust that this clarifies the record.

With all good wishes.

Sincerely yours,

FRANK STANTON, *President.*

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4. LETTER DATED JUNE 22, 1956, FROM DR. STANTON [INSERTED IN THE RECORD ON JULY 17, 1956], COMMENTING ON PENDING LEGISLATION RELATIVE TO POLITICAL BROADCASTING

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N. Y., June 22, 1956.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: In the course of my testimony before the Senate Committee on Interstate and Foreign Commerce on June 12, 1956, you referred (transcript p. 3324) to "this very timely and ticklish problem of political time" and you also referred to a number of bills on the subject. You requested that I submit our views in writing. I am glad to do so.

The bills are as follows: S. 771, S. 1208, S. 1909, S. 2306, S 3308, and S. 3962. The latter three deal with the perplexing problem of equal time. Before turning to those three bills, I would like to discuss the first three bills which deal with more limited subjects.

1. S. 771: This bill proposes to withdraw the equal-time rights of section 315 (a) of the Communications Act of 1934 from any individual who has been convicted of subversive activities and from members of certain subversive organizations.

While CBS has no objections to the principle embodied in this bill, I call to your attention that the bill apparently places a difficult and heavy burden on the broadcaster since it seems to require him to determine in each case whether anyone claiming rights under section 315 has been convicted of subversion or, even more difficult of ascertainment, whether he is a member of certain sub-

least 4 percent of the vote in the preceding presidential election, or (*b*) if their candidacy is supported by petitions numbering at least 1 percent of that vote.

Thus S. 3308 takes one very useful step forward: it relieves the broadcaster of the requirement that equal time be granted to presidential and vice presidential candidates of fringe parties.

CBS believes, however, that there are serious omissions in title III of S. 3308. It provides no relief in the case of candidates for the nomination for the Presidency, nor does it provide relief in cases of campaigns at any level other than the Presidency or Vice Presidency.

It is obscure candidates for the presidential nomination, even of major parties, who have given broadcasters some of their gravest difficulties. Some of the actual experiences on this score are set out on pages 5 to 8 of Mr. Salant's testimony attached as exhibit A. The short of it is that anybody who wants the presidential nomination of the Democratic or Republican parties today has equal right to President Eisenhower, if the Republican nomination is desired, or to Governors Stevenson and Harriman or Senator Kefauver, if the applicant claims he wants the Democratic nomination. There is no limit to the potential candidates. It seems to me in the circumstances that relief in respect of candidates for nomination is imperative.

I also point out that S. 3308 does not have the same limitations as S. 2306; the former applies even to set campaign speeches and political rallies. On the whole, we believe it more desirable to limit exemptions as to the types of programs specified in S. 2306. If equal-time requirements are to be preserved at all, it is more desirable that when time is given free to candidates to use however they please, the equal-time requirements should apply to all competing candidates for the same office.

6. S. 3962: This bill proposes a comprehensive amendment to section 315. It embodies some important steps forward; but it also embodies one extremely disturbing proposal.

It would leave section 315 precisely as it is now but would add several new subsections, as follows:

Subsection (b) (1) of the bill deals only with nominees for President and Vice President and is substantially identical to title III of S. 3308. In effect, it applies the equal-time requirements only to presidential and vice presidential candidates nominated by major parties.

Subsection (b) (2), however, is in addition to what appears in title III of S. 3308 and represents an important improvement. It expressly applies to candidates for presidential and vice presidential nomination. First, it imposes equal-time requirements on candidates for such nomination only if the nomination is by a major political party. Second, subsection (b) (2) provides that the candidate for such nomination by a major political party is not entitled to the benefits of the equal-time requirements unless he (*a*) is the incumbent of any elective Federal or statewide elective office, or (*b*) has been nominated for President or Vice President at any prior convention of his party, or (*c*) is supported by petitions including at least 200,000 valid signatures.

Thus, subsection (b) (2) of S. 3962 would cure the defect I have noted above in connection with title III of S. 3308, since it would relieve broadcasters of the requirement of giving equal time to unknown or unsubstantial candidates for the Democratic or Republican presidential nomination.

I should note some reservations concerning subsection (b) (2). It appears to me that the definitions of eligibility are somewhat inflexible. Had these provisions been in effect in prior campaign years, we would have had to demand petitions with 200,000 signatures before General Eisenhower, Wendell Willkie, Herbert Hoover (in 1928), or John W. Davis could have qualified for a broadcast appearance as a candidate for presidential nomination of their respective parties, for none was an incumbent of any elective Federal or statewide elective office, and none had been nominated for President at any prior convention.

We think it more desirable to avoid embarrassing problems such as this by allowing the broadcaster some limited discretion in determining who is and who is not a substantial candidate for nomination of a major party. This could be done in terms of defining who could be presumed to be a substantial candidate, by using the three tests specified in subsection (b) (2) of S. 3962, but allowing broadcasters to go beyond that so as to take care of such situations as presented by Mr. Hoover in 1928, Mr. Willkie, General Eisenhower, and Mr. Davis.

The new subsection (c) of S. 3962 also embodies an important advance beyond title III of S 3308. In contrast to S. 3308, subsection (c) of S. 3962 would

central issues of the campaign. We have already tentatively set aside class A nighttime periods during next fall for that purpose. I hope that legislation will be enacted which permits us to make that use of those time periods.

Sincerely yours,

FRANK STANTON,
President, Columbia Broadcasting System, Inc.

EXHIBIT A

STATEMENT OF RICHARD S. SALANT, VICE PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC., BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMUNICATIONS OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. Chairman and members of the subcommittee; my name is Richard S. Salant. I am vice president of Columbia Broadcasting System, Inc. I am appearing today to record the Columbia Broadcasting System's support of H. R. 6810, which the chairman of this subcommittee has introduced at our request.

H. R. 6810 proposes to amend, in a manner which I shall specify in a moment, section 315 (a) of the Communications Act. Section 315 (a) provides that if a broadcasting station permits a "legally qualified candidate for any public office" to use that station, it shall afford equal opportunities to all other legally qualified candidates for the same office. Section 315 (a), it should be noted, does not require any station to make time available to any candidate; it provides only that if a station does make time available to a candidate, either on a free or on a paid basis, it must do the same, on the same basis, for all other candidates for the same office.

The only change in section 315 (a) which is proposed by H.R. 6810 is that its provisions be made inapplicable to "any news, news interview, news documentary, panel discussion, debate, or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network in the case of a network program * * * "

In other words, as far as set campaign speeches or political rallies are concerned, section 315 (a) remains just as it is, with no change. Then if a station or network makes its facilities available free for a speech by one party's candidate for office, it must do exactly the same for every other party's candidate for that office. But if, instead of a set appearance controlled by the candidate, the use of facilities is essentially in connection with the station's or network's exercise of its news-coverage function, produced under its own supervision and control and not the candidate's, then the broadcaster may exercise some discretion and, depending on the circumstances, need not necessarily do exactly the same for every other candidate for the same office.

Note that H.R. 6810 will not permit, and is not intended to permit, favoritism in granting free or paid time among candidates. Rather, its only purpose is to permit broadcasters, in the exercise of their news and journalistic functions, greater opportunity to inform the American public.

The fact is—and I believe that this is almost universally conceded—that while section 315 (a) is rooted in the soundest principles of fair play, it nevertheless has an inherent and fatal weakness. Put bluntly, section 315 (a) stifles and suppresses public information and knowledge; its consequence is to inhibit radio and television from fulfilling to the fullest potential their roles of informing the electorate. H.R. 6810 is designed only to reach these defects by providing an effective remedy while at the same time preserving the basic principles which we believe the Congress sought to achieve in enacting section 315 (a).

Over the years of operation under section 315 (a), we at CBS have become increasingly concerned with, and increasingly aware of, its suppressive effects. Broadcasting, and particularly in recent years television broadcasting, has come to play an increasingly important role in keeping the American people informed of the facts and issues which the people themselves ultimately determine in the voting booth. For in recent years there has unquestionably grown up a new and vital form of journalism—electronic journalism. More and more, the American people have turned to television for firsthand knowledge of the candidates—of what the candidates say and how the candidates look when they say what they have to say.

Thus, television has provided an unprecedented opportunity to the American people—an opportunity which has never before been available to them on so vast and immediate a scale. The people can see and hear the candidates directly; they can make up their own minds on the basis of firsthand direct information and impression.

There can, we believe, be no quarrel with the general proposition, therefore, that television and radio have given a new vitality to American democratic processes. They have permitted a more direct participation by American citizens in our democratic processes to a greater extent than has ever been possible before.

In 1858 the most famous series of American political debates took place between Abraham Lincoln and Stephen Douglas, Republican and Democratic candidates for the Senate from Illinois. Only some 75,000 people saw and heard Lincoln and Douglas engage in these historical debates. Today, television could make it possible for some 115 million people simultaneously to see and hear the presidential candidates debate; radio makes it possible for some 140 million people simultaneously to hear these debates.

But the fact which concerns us so deeply, and which led to our proposing H. R. 6810, is that if such debates could be arranged between the Republican and Democratic candidates next fall, section 315 (a) would, as a practical matter, bar us from broadcasting them. It is this sort of public disservice which H. R. 6810 would remedy. For fair as section 315 (a) may seem on its face, its practical result is to drop an iron curtain between voters and candidates.

This is so because whatever the voter may think and whatever may be the practical political fact, for broadcasters there is no such thing as a two-party system. For example, in 1952 there were 18 parties with presidential candidates who qualified in one or more States. As a consequence, if we could have arranged debates between General Eisenhower and Governor Stevenson in 1952, we would have been required to give the same amount of time to each of the other 16 parties with presidential candidates.

We cannot believe that any law which makes impossible so extremely dramatic and useful a method of informing the public and of contributing to the vitality of our democratic processes should remain on the books.

Preventing such debates is only one of the unfortunate consequences of section 315 (a). Section 315 (a) also tends to dilute broadcasters' efforts most effectively to present significant campaign issues. It tends to reduce broadcasters to third-class membership in the free press by precluding the electronic journalists from exercising the kind of news judgment which all other members of the press are constitutionally guaranteed. Let me illustrate how section 315 (a) has had these undesirable results of precluding broadcasters from achieving the full potentiality of their roles in electronic journalism, and thus depriving the public from all the information to which it is entitled.

For purposes of section 315 (a), a candidate for a public office is defined as any person who has publicly announced that he is a candidate for nomination or election and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate. It is enough that the candidate be eligible o be voted for by a writein—and a number of States permit writein candidates. Whether his campaign is merely for nomination or is for election, he need only be a bona fide candidate—which has been interpreted by the FCC to mean not that there need be the remotest chance that he be nominated or elected, but only that the candidate would, if nominated, accept the nomination or would, if elected, accept the office.

In 1952, we learned the hard way of the sweep of these provisions. There was a gentleman named William R. Schneider, a Missouri citizen. Prior to the period of presidential nominations in 1952, Mr. Schneider had made a number of requests to CBS to grant him time to expound his views on the air. He insisted that both Senator Taft and General Eisenhower were leftwing and only he represented true republicanism. We felt that there was not sufficient public interest in his views and that he was not sufficiently well known to warrant giving him time.

But Mr. Schneider learned what more and more persistent and perspicacious students of section 315 (a) are beginning to learn. He qualified himself under section 315 (a) simply by announcing that he was a candidate for the Republican nomination for President of the United States. He filed in the New Hampshire and Oregon primaries and thus in the opinion of the FCC qualified as a candidate for the Republican presidential nomination. After he announced his candidacy, and filed in these two primaries, he renewed his demand for time on CBS facili-

ties, this time making his claim under section 315 (a). He pointed out that on a number of program series which we had carried preceding the conventions and dealing with the candidates for the Republican and Democratic presidential nominations we had broadcast interviews of Senator Taft, of spokesmen for General Eisenhower, and of other candidates for the Republican nomination. Mr. Schneider claimed as a result that section 315 (a) required us to give him equal opportunities on the CBS radio and television networks.

Mr. Schneider took us to court and to the Federal Communications Commission. The Commission ruled that Mr. Schneider was right and that he was entitled to the protection of section 315 (a). And so Mr. Schneider joined the ranks of General Eisenhower and Senator Taft and had himself two network half hours free.

As a footnote to this painful lesson which we learned, I may add that Mr. Schneider got only 230 votes in the New Hampshire primaries; we never did find out how many votes he got in Oregon. But we did discover that Mr. Schneider who, under section 315 (a), was thus held to be a qualified candidate for the Republican nomination was not, in the mind of the Republican Party, even qualified to be admitted to the Republican convention. He was unable to get a ticket to get into the convention hall.

The implications of our little adventure with Mr. Schneider are obvious and, as we look toward 1956, frightening. You can readily appreciate why in 1956 we are going to have to think twice before we provide as comprehensive coverage to candidates for the nominations as we did in 1952. For there is hardly any practical limit to the number of people who could do what Mr. Schneider did. All they have to be is 35 years old, American citizens, and willing to accept the nomination if it is tendered to them. A chance to appear before millions of people with no cost at all to themselves might well prove an enormous temptation to a great many soapbox orators and publicity seekers. As time goes on and Mr. Schneider's triumph becomes recognized, it is inevitable that we will have to cut down on our preconvention political coverage. One needs only a couple of dozen Mr. Schneiders for the air to be filled with little else. We will have to be very careful about presenting on our news panel, interview, and public-affairs programs well-known candidates for the nomination, because we know that by doing so we will place ourselves under the obligation under section 315 (a) to put a potentially unlimited number of people, in whom the public has no interest at all, on the air.

And the problem is the same even after the nominations are in. Although here the numbers of potential candidates get reduced from the hundreds of thousands or millions to the dozens, the number is still too large to be workable. For it is after the nominations are in that we find that the broadcaster cannot accept what all political commentators and historians accept—that ours is essentially a two-party system. Again, let us look at the 1952 record.

How many of you have ever heard of Homer A. Tomlinson, Fred C. Proehl, Don Du Mont, Edward Longstreet Bodin, or Ellen Linea W. Jensen? Each of these was a duly nominated candidate for President in 1952. They were the candidates of the 18 political parties which presented presidential nominees in the last campaign. There were presidential candidates presented not only by the Republican and Democratic Parties, but there were also presidential candidates of the American Party, the American Rally, the Christian Nationalist Party, Church of God Bible, Constitution Party, Greenback Party, Poor Man's Party, Progressive Party, Prohibition Party, Republimerican Party, Socialist Labor Party, Socialist Party, Socialist Workers Party, Spiritual Party, Vegetarian Party and Washington Peace Party.

No matter how obscure some of these parties may be, section 315 (a) allows us to make no distinction among them. We cannot, therefore, consider allowing the Republican and Democratic presidential candidates to appear on a press interview, forum, or panel program or a debate without taking into account the fact that under the law we would be required to do the same for the other 16 parties.

As a result, with a list of parties as formidable in numbers and as obscure in national interest as this list, we have in general been forced as a matter of simple common sense, in the interests of our own self-preservation, as well as the protection of our listeners, to adopt restrictive policies during campaign periods.

The problem is not limited to candidates for presidential nominations or elections. Let me give some further illustrations of our 1952 experiences where we found section 315 (a) limited us in serving the obvious public interest in clarifying and sharpening national issues.

Furthermore, in his concern for adjacency scheduling of religious programs, Dr. Stanton ignores the fact that the religious program with the largest audience, that of Bishop Fulton J. Sheen, is broadcast in class A time and surrounded and opposed by supposedly first-class entertainment programs.

Religious programs can reach the majority audience that desires them only if the networks schedule them when that audience is available. Network programs stand or fall on the basis of audience. Audience ratings are almost the sole criterion of success. Therefore, it is significant that neither Dr. Stanton nor Mr. Sarnoff in their claims about the adequacy of religious programs on their networks ever once mention the audience for these programs.

The issue between the public and the networks on the network handling of public-service broadcasting does not turn on how much money the network spends per program (although the published figures for religious programs listed in the briefs are pitifully small in relation to budgets for commercial programs); nor on program planning and participation; nor on awards and mentions in the trade press. It hinges on adequacy of presentation and on presentation of programs at a time when the chosen audience is available. It is the obligation of the network to produce—and pay for—a good program that draws a demonstrable audience. If it fails in that, then the network has failed in its public responsibility. I am applying here only the yardstick of measurement by audience that the networks have willingly and eagerly accepted as the basis for judging the success of their commercial programs.

In the case of religion, no network has demonstrated by means of audience figures that it is providing an adequate broadcast service.

It seems apparent from the statements of Messrs. Stanton and Sarnoff that religious broadcasters, and all others in the public-service field, cannot expect to receive treatment from the networks commensurate with the importance of their presentations in the public view. Complacency and indifference are the keynotes of these statements from the network policymakers. It is understandable from them why the public comes to your committee for aid.

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10. Letter Dated August 2, 1956, From Mr. Ervin, Commenting on Pending Legislation on Political Broadcasting

National Broadcasting Co., Inc.,
New York, N. Y., August 2, 1956.

Hon. Warren G. Magnuson,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

Dear Senator Magnuson: During the course of the hearings relating to television before the Committee on Interstate and Foreign Commerce last month, you requested that the networks submit written statements with respect to the bills under consideraion by the committee concerning political broadcasts. We appreciate this opportunity and I am pleased to present the views of the National Broadcasting Co.

My understanding is that at this time there are seven such bills: S. 771, S. 1208, S. 1909, S. 2306, S. 3308, S. 3962, and S. 4250 before the committee which are designed in some manner to amend section 315 of the Communications Act. This section deals with the subject of broadcast facilities for candidates for public office. Most of the bills have as their principal purpose a more workable, realistic and equitable law. We are fully in accord with this objective and we commend you and the committee for undertaking this worthwhile task.

For the purpose of convenience I shall discuss the bills in the order in which they were introduced in the Senate. This, of course, does not in any way constitute an evaluation of their relative importance.

S. 771

The present law requires a broadcaster to afford equal opportunity to all legally qualified candidates.

S. 771 would exclude from the equal opportunity privilege an individual who is a legally qualified candidate but who has been convicted under the United States Criminal Code of espionage, sabotage, treason, sedition, or other subversive activities. It would also exclude a person who is a member of any organization proscribed by section 3 of the Communist Control Act of 1954 or any organization registered under the Subversive Activities Control Act of 1950 as a Com-

S. 1090

This bill would require an announcement in any political television broadcast as to whether the candidate or his spokeman is speaking extemporaneously or from prepared material and what facial makeup, if any, is being used.

Although this bill is of minor significance, NBC opposes it because it is discriminatory. It imposes requirements upon one medium of expression—television—which are not imposed on any other medium.

S.2306

Section 315 (a) of the Communications Act now provides that if a broadcast licensee permits "a legally qualified candidate" for a public office to use the facilities of his station, the broadcaster must afford equal opportunity to use the station to all other legally qualified candidates for the same office. The present act does not compel any station to make time available to political candidates. However, if under any circumstances a single candidate is afforded time, a chain reaction commences whereby the broadcaster must furnish equal opportunity to all qualified candidates for the same office.

S. 2306 provides a limited exception to the all-encompassing scope of the present section 315 (a). It is made inapplicable to:

"* * * any news, news interview, news documentary, panel discussion, debate, or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network in the case of a network program."

A weighing of all considerations leads us to conclude that on balance the bill is sound in principle. It recognizes that we live in an era of electronic journalism and that the literal application of the equal time provision tends to defeat itself. It also would remove to a degree an existing discrimination. In no other field of programing is the broadcaster so mistrusted that there is a statutory imposition of equal time for all contenders. We believe that the handling of controversial issues by the broadcasting industry has shown that on the whole broadcasters are a responsible group capable of performing their function fairly.

In order to encourage this type of programing and in the interest of affording full play to freedom of expression by candidates, it is also recommended that S. 1208—which exempts broadcasters from liability for defamation—be made applicable to the type of programs covered by S. 2306 as well as those which are strictly within the purview of section 315.

S. 3308

This is an omnibus bill to amend the Federal elections laws. Only title III is concerned with the matter of political broadcasts.

Title III proposes a limited amendment to section 315. The proposal is to require a broadcaster to afford equal facilities to all legally qualified candidates for President and Vice President of the United States only (i) if they are the nominees of a political party whose presidential candidate polled at least 4 percent of the vote in the preceding election, or (ii) if their candidacy is supported by petitions filed under State laws which in the aggregate have a number of signatures equal to 1 percent or more of the total popular votes cast in the preceding election.

This is constructive legislation and NBC favors it. One of the most unworkable aspects of the present law is the application of absolute equality among all political candidates—even those fringe groups which have little popular support. For example, there were over 15 parties supporting presidential candidates in the 1952 election—and the total aggregate vote for all of these parties amounted to far less than 4 percent of the total popular vote. This large number of aspirants makes it extremely hazardous, if not impossible, for the broadcaster to offer major candidates television exposure.

This bill, however, would remedy this situation in large measure during the election period by limiting the equal facilities privilege to those candidates who have substantial support.

It is recommended that the bill be revised to afford some protection with respect to candidates for nomination as well as candidates for election. The period before nomination is a particularly troublesome one because nearly anyone may claim to be a contender for his party's nomination for high office. A dozen or more self-proclaimed candidates could do 1 of 2 things: (1) They could seriously interfere with a national program service; or (2) their very existence could result in no television coverage of the nomination contest. Either consequence is undesirable and remedial legislation seems to be required.

EXHIBIT NO. 5.

(Telegram Received by Telephone)
(Confirmation Copy to Be Mailed)

Date—CC Apr 17 157A; Check—68 NL PD 5 Extra Pghs; Tel. No.—PU 5-0325; Dest'n.—NYK; Signature—Lar Daly, Republican Candidate for President, 12022 South Halsted, Apr. 18; Sub.—Cfn Furnished X.

COPY

Robt Sarnoff, Pres.
NBC 33 Rockefeller Center

As avowed certified actively campaigning candidate I demand immediate free equal time to reply Eisenhower, my opponent Republican presidential nomination, address April 16th your network.

Suggest Chicago, Indianapolis or other suitable Indiana city origin my reply so as not interfere my Indiana campaign where every hour valuable.

Request immediate compliance. Any delay seriously harmful my campaign and places me at greatly unfair disadvantage.

Mail CY 12022 South Halsted MR D

Note—Same telegram sent same date to Presidents of other 3 Television and Radio networks. . . .L.D.

This same letter sent Certified Mail, Return Receipt Requested, Air-Mail, to the Presidents of all 4 networks, National Broadcasting Co., Columbia Broadcasting System, American Broadcasting Co., and Mutual Broadcasting System.

Reply to—
844 Vermont St., Chicago 43, Ill.
August 4, 1956

Harry Trenner, President
Mutual Broadcasting System
1440 Broadway
New York, N.Y.

Mr. Trenner:

Dwight D. Eisenhower, a candidate for the 1956 Republican Presidential nomination, was accorded the free use of your network's facilities, on Friday, August 3, 1956, on the occasion of the address to the country of John Foster Dulles, Secretary of State.

I also am a bonafide and actively campaigning candidate for the 1956 Republican Presidential nomination, and have been legally certified as such by the only competent and duly constituted authorities authorized to decide the fact under the laws of the 48 states, viz., the State Election or Electoral Boards, or the Secretaries of State of the 48 states of this Union.

Such sole and competent authorities of the states of Illinois, Indiana and Montana, have so certified me to their various County and Circuit Clerks as a legally qualified candidate for the Republican nomination for President of the United States. Responsible officials of your network are aware of that fact.

As an American citizen, exercising my constitutional rights as guaranteed by Section 315 of the Federal Communications Act of 1934, as amended, I formally request of your network free and equal time for use of your network's facilities to reply to Dwight D. Eisenhower, my only announced and also legally qualified candidate for the 1956 Republican Presidential nomination. I make this

additional request the same as I previously requested free and equal time as that accorded Dwight D. Eisenhower on Feb. 29, April 16, and April 21, 1956.

.....

LAR DALY
Republican candidate for President

EXHIBIT NO. 6.

(Letterhead of)

STATE OF MONTANA
DEPARTMENT OF SECRETARY OF STATE
HELENA

April 25, 1956

S. C. Arnold
Secretary of State

Clifford L. Walker
Chief Deputy.
James M. Teakles
Deputy

Lar Daly
12022 South Halsted St.
Chicago 28, Illinois

Dear Sir:

Please be advised I have this day filed in my office your affidavit of candidacy for President of the United States. Your name will be certified for the ballot at the proper time.

I enclose herewith copies of the 1952 and 1954 primary returns also send you under separate cover copy of 1956 Election Laws.

Very truly yours,
/s/ S. C. Arnold
Secretary of State

p
enc.

EXHIBIT NO. 7.

(Letterhead of)

Republicans! 1956

LAR DALY for President
TOM DEWEY for Vice-President

AMERICA FIRST REPUBLICAN COMMITTEE
P. O. Box 733 — Chicago 90, Illinois
Phone WAbash 2-5820

July 28, 1956

President Dwight D. Eisenhower
White House
Washington, D.C.

Mr. President:

I am a legally qualified candidate for the 1956 Republican Presidential nomination, and have been actively campaigning for the nomination since August, 1955. I had the enclosed literature printed for mailing to all of the Delegates and Alternates to the 1956 Republican National Convention. Naturally, it is extremely important to my campaign that they receive it at their home or office addresses before they go to San Francisco.

I have written the Chairman of the Republican National Committee for the names of the Delegates and Alternates, but have received no reply. The newspaper wire services can't help me. Time is getting very short.

I have also written Mr. Ted Dalton, Republican Convention Housing Chairman, at the Mark Hopkins Hotel in San Francisco, for one or two rooms in the Mark Hopkins for my Convention Campaign headquarters. I have received no reply from Mr. Dalton.

You, Mr. President, are the only other announced Republican candidate for President. As one fellow-candidate to another, will you use your influence with the proper Republican officials to get me the Delegates and Alternates names and addresses, and also, at least one room in the Mark Hopkins hotel for my headquarters?

Thank you for any help you may give me, and assuring you of my continued good wishes for your health and happiness, and that of your family, I remain,

Sincerely,

.....

LAR DALY
844 West Vermont St.
Chicago 43, Illinois

THE WHITE HOUSE

Washington

August 8, 1956

Dear Mr. Daly:

The President has asked me to thank you for your good wishes, and to observe that the matters you raised in your letter are exclusively the concern of the Republican National Committee—not the White House.

We can only suggest that you repeat your request to Mr. Hall. We shall be glad, however, to send him a copy of this correspondence.

With all good wishes.

Sincerely,
/s/ Howard Pyle
Howard Pyle
Deputy Assistant
to the President

Mr. Lar Daly
844 Vermont Street
Chicago 43, Illinois

(Letterhead of)

1856 - Centennial - 1956

COMMITTEE ON ARRANGEMENTS
1956 REPUBLICAN NATIONAL CONVENTION
Fairmont Hotel, San Francisco 8, Calif.
Phone NAtional 7-1242

(Rec'd. 8-6-56 (Air Mail))

Mark Hopkins Hotel
San Francisco
August 3, 1956

Mr. Lar Daly
844 Vermont Street
Chicago 43, Illinois

Dear Fellow Republican:

For the 1956 Republican National Convention to be held in San Francisco August 20-24, we have made to you the following room assignment:

1 - Double Bedroom - Shaw Hotel

Enclosed is an application form which you will please execute and return 4 copies to us (you retain the green copy) with check for deposit made payable to the hotel, whereupon we will have it approved by the hotel and return a copy to you.

We are happy that you are coming to our Centennial Convention. We are sure that you will enjoy this opportunity of participating in what Chairman Leonard Hall describes "will be the greatest convention in the history of the GOP", and in paying a deserved tribute to our great President, Dwight D. Eisenhower.

Respectfully,
Subcommittee on Housing
Republican National Convention
/s/ Ted Dalton
By: Ted Dalton, Chairman

Date: August 8, 1956

COMMITTEE ON HOUSING
1956 REPUBLICAN CONVENTION
SAN FRANCISCO, CALIFORNIA

Dear Sir:

Please reserve the following accommodations for me as Convention Headquarters for actively campaigning candidate for 1956 Republican Presidential nomination to the 1956 Republican National Convention to be held in San Francisco, August 20 to 24:

Double bedrooms (number) 1

I will be accompanied by Raymond Kahoun, Jr., Sec'y. America First Repub. Comm. and plan to arrive by American Airlines on August 19, at 5:00 SF time and plan to depart on August 23, at 11:00 SF time by American Airlines.

I enclose deposit of $50.00 per room, payable to Shaw Hotel providing my accommodations, to guarantee accommodations for four days.

Lar Daly (Lar Daly)
844 Vermont St.
Chicago 43, Ill.
PUllman 5-2033 (Residence)
PUllman 5-0325 (Office)

(Letterhead of)

1856 - Centennial - 1956

COMMITTEE ON ARRANGEMENTS
1956 REPUBLICAN NATIONAL CONVENTION
Fairmont Hotel, San Francisco 8, Calif.

Phone NAtional 7-1242

Mark Hopkins Hotel
San Francisco
August 10, 1956

Mr. Lar Daly
America First Republican Committee
844 Vermont Street
Chicago, 43, Illinois

Dear Mr. Candidate:

We are processing your application at the Shaw Hotel. It is well located and we think that you will be just as happy there.

Since the Committee of which I am Chairman only deals with providing housing for those attending the convention, I have nothing to do with the handling of tickets. Such application should be addressed to the Arrangements Committee at the Fairmont Hotel, San Francisco, Calif.

I do not have a list of the delegates and alternates, but I am sending you a list of the various state delegation headquarters hotels. However, a directory is being made up by Western Union, the telephone company and Look and Time. You will be able to acquire a copy from one of these companies, and it should be helpful to you in your campaign.

All good wishes!

Sincerely,
/s/ Ted Dalton
Ted Dalton

TD/fe
cc: Mr. Ray Crummey, Shaw Hotel, McAllister & Market St., San Francisco

EXHIBIT NO. 8.

(Chicago Sun-Times—Wednesday, January 25, 1956)

JOHN DREISKE

—Prestige In Primaries

LAR DALY IS AT IT AGAIN. The man who once filed Gen. Douglas MacArthur's name at Springfield for the presidential preferential primary with only one name, Daly's on the petition, has now filed both MacArthur's name and that of William E. Jenner. *If both are withdrawn, Daly says, Daly's own petitions for the Republican presidential primary in Illinois will remain in* "because the cause of 'America First' in politics must be officially represented on the primary ballot April 10."

(Springfield, Illinois State Register—January 17, 1956)

620 Candidates
MacArthur's Name In Primary;
Heavy Filing Marks First Day

Illinois State Register Capitol
Bureau.

A tally today showed 620 candidates entered in Illinois primary races including President Eisenhower and Gen. Douglas MacArthur in the Republican presidential primary.

However, MacArthur is expected to ask that his name be withdrawn as he did four years ago. Lar Daly, of Chicago, a perennial candidate himself, filed MacArthur's name as he did in 1952 and said he would replace him with U. S. Sen. William E. Jenner, of Indiana, if the general withdraws.

If Jenner also declines, Daly said he would run for President himself. Should either MacArthur or Jenner stay in the race, Daly plans to file for the Republican governor nomination.

(Copy of Letter sent to General Douglas MacArthur by Lar (America First) Daly, on January 10, 1956, from Chicago.)

General Douglas MacArthur
Remington Rand, Inc.
Rowayton, Conn.

General:

Since 1936 I have boosted you for President of the United States. If ever the country needed a man of your calibre to lead it the time is now. Due to the vicissitudes of politics, we of the America First Republican faction believe that 1956 presents the best opportunity yet to secure the Republican nomination for President for you.

From the enclosed material you will see that this undertaking is nationwide in scope. I ask you to read Page 2 of my Platform for Governor of Illinois. It explains in detail just what is meant by the words "America First in Politics." The political petitions enclosed are now in circulation throughout Illinois.

We consider United States Senator William E. Jenner of Indiana to be the "other" MacArthur. He thinks, talks and acts like you for America's best interests first, better

than any other living Republican politician. We are promoting him with you for the Presidency in the event that you are absolutely unavailable for the Republican nomination. I personally, as the founder and National Director of this effort, refuse to believe that "Mr. American" would not answer the call of the Americans in America if they unmistakably showed they wanted you.

We are *not* asking you to declare yourself a candidate for the Republican nomination for President of the United States. All we ask is that you place yourself in the category of other possible candidates, such as Governor Harriman of New York, Governor Lausche of Ohio, and Governor Herter of Massachusetts, among others, and give the impression to the American people that you will accept the Republican nomination if it comes your way.

This means doing nothing to *further or hinder* our political efforts in your behalf. I will personally file your name in Illinois. We request that you do *not* write the Illinois Secretary of State to have your name removed, as he will probably inform you is your privilege. The right of the people to express their choice for President is paramount to all others.

Sincerely,
LAR (America First) DALY
12022 South Halsted St.
Chicago 43, Ill.

(Chicago Daily News—Tuesday Jan. 24, '56)

Primary Lineup
Still Changing
For State GOP

Jenner Expected to Drop Out,
But Knowland Stays In

By George Thiem
Of Our Springfield Bureau

Springfield, Ill. — Additional withdrawals are expected to change the lineup on the April 10 Illinois primary ballot.

But as of Tuesday, four Republican and one Democratic candidate for President were entered.

President Eisenhower's name heads the GOP list.

Along with him are Sen. William F. Knowland (Calif.), ranking Republican of the Senate foreign relations committee, Sen. William E. Jenner (R., Ind.), and Lar Daly, Chicago upholsterer and perennial runner for office.

GEN. DOUGLAS MacArthur withdrew his name by sending a withdrawal slip to Secretary of State Carpentier Monday.

Jenner was expected to do the same before the Saturday noon deadline.

Knowland, however, announced in Washington Monday night that he would not ask that his name be withdrawn. He cited "uncertainties" about Mr. Eisenhower's intentions and • • •

COPY

(Confirmation Copy to be Mailed)

MO 50 PD

January 18 1956 Chicago Illinois

U. S. Senator William E Jenner
3601 Vanness NW Wash DC

I filed MacArthur for President Monday. Filing you Friday. Will you withdraw if MacArthur sticks and will you stick if MacArthur withdraws. Cause of America First in

politics must be officially represented on Illinois ballot. Next to MacArthur you are best. Request answer immediately. Phone Interocean 8-6985 or wire collect.

LAR DALY

9P

Mail copy to 12022 South Halstead Chgo 43
PU 5-0325
LAR DALY

(Western Union Telegram)

(Duplicate of Telephoned Telegram)

BB510 WM81 59) . . . .

W SND125 Govt PD—SN Washington DC 20 453PME—
Jan 20 PM 4 15

LAR DAY—(Daly) 12022 S. Halsted St.

Phone Interocean 8-6985 Chgo—

Please do not enter my name in any primaries. I plan during the next two years to carry out my obligations as Senator of the State of Indiana—

William E Jenner United States Senator—

(Chicago Tribune—1-27-56)

Jenner Takes
Name Out Of
State Primary

(Chicago Tribune Press Service)

Springfield, Ill., Jan. 26—Sen. Jenner [R., Ind.] has withdrawn his name from the Illinois Republican Presidential preferential primary April 10, State Secretary Carpentier announced today.

The withdrawal leaves President Eisenhower and Sen. Knowland [R., Cal.] listed, along with Lar Daly of Chicago.

EXHIBIT NO. 9.

(Peoria, Ill. Journal Star February 24, 1956)
By Edward F. Murphy,
Journal Star Political Writer

Daly Says He'll Quit Race
As Presidential Candidate

Attired in his Uncle Sam suit, of red, white and blue, Lar (America First) Daly, Chicago businessman, told a Republican rally at Itoo hall last night that the filing of President Eisenhower's name in the preferential Illinois primary was a "cowardly act."

Amid boos from the audience, Daly, a perennial candidate at Republican primaries, told the packed crowd he had written President Eisenhower, explaining his own personal reactions.

"It was cowardly because Gov. William Stratton was afraid to stand on his own two legs in a primary for renomination, and he kept other good Republican candidates off the ballot because they don't want to be labeled anti-Eisenhower," the America First Republican leader declared.

Daly said that Secretary of State Charles Carpentier would receive a letter today requesting that Daly's name be withdrawn from the April 10 Republican primary ballot.

(Chicago Daily News—2-24-56)

Lar Daly Quits
Delegate Race

Lar Daly said Friday he has asked the secretary of state to withdraw his name from the list of candidates in the April 10 presidential preference primary.

Daly, a perennial also-ran, remains a candidate for the Republican nomination for governor.

He campaigns as a "American First" party candidate.

(Chicago Tribune—April 10, 1956)

ILLINOIS PICKS
NOMINEES FOR
TOP OFFICES

Ballots on Adlai and Ike
Eisenhower on Ballot

President Eisenhower is on the G. O. P. ballot in the G. O. P. "popularity contest." So are *Sen. Knowland [R., Cal], who couldn't get his name taken off*, and Lar Daly, who has appropriated the nickname "America First" to aid his several forlorn candidacies in recent years.

(Broadcasting - Telecasting—March 12, 1956)

Daly Will Take Time Demand
to FCC If Networks Refuse

LAR DALY, Republican candidate for nomination for U. S. President and governor of Illinois in that state's primary April 10, told B-T Friday he will carry equal time appeal (early story page 42) to FCC if networks refuse request or if they fail to respond to his time bid by today (Mon.).

Mr. Daly also reported receipt of letter from Julius Brauner, secretary of CBS Inc., asking more information on his political aspirations.

Offices of Illinois Secretary of State and Chicago Board of Election Commissioners *confirmed Friday that Mr. Daly is within legal rights in entering name for both offices in Illinois primary* on basis it is preferential, not tantamount to nomination itself and not binding on Republican national convention delegates from Illinois.

Don Butler, chief clerk, Illinois Secretary of State's office, told B-T that, therefore, Mr. Daly is not actually candidate for President and that it would "carry no weight" in national convention.

Mr. Butler said he has so advised networks and that he has received similar queries from newspapers and other groups. He noted 19 states maintain presidential primaries.

EXHIBIT NO. 10.

Broadcasting Publications Inc
Sol Taishoff
President

Maury Long
Vice President

H. H. Tash
Secretary

B. T. Taishoff
Treasurer

BROADCASTING
TELECASTING

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Senior Editors
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News Editor
Fred Fitzgerald

March 5, 1956

BROADCASTING
TELECASTING
Vol. 50, No. 10

IKE'S DECLARATION SETS OFF POLITICAL TIME FREE-FOR-ALL

President chooses radio-tv to explain his position
Democrats immediately demand equal time to answer
It's beginning of months of trouble for broadcasters

EIGHT grim months of political broadcasting loomed at the weekend, with television and radio caught between the two political parties and the equal-time requirements of the FCC and the Communications Act.

As the campaigning got away to a quarrelsome start last week, it became obvious that *tv and radio will serve as the primary means of influencing voters.* This will be especially true in the case of President Eisenhower, who has flatly rejected whistle-stopping.

The reason for the emphasis on electronics, especially tv: Campaigners *have a 100 million potential tv audience* when they go on the air (40 million sets by convention time), according to Sig Mickelson, CBS news-public affairs vice-president (page 32).

All networks, and most of their stations, carried President Eisenhower's historic news conference and address to the nation last Wednesday. As a result the networks found their moral integrity challenged by the Democrats because they adhered to legal and FCC tenets.

Developments moved swiftly and charges were met by counter-charges as the President's decision to stand for a second term was handled by broadcasters as a major news development.

The equal-time nemesis arose Thursday when Paul M. Butler, chairman of the Democratic National Committee, and F. Joseph Donahue, campaign manager for Sen. Estes Kefauver (D-Tenn.), asked ABC, CBS, NBC and Mutual for a chance to reply to the President's speech, claiming it was political in nature. Mr. Butler said he wanted "equal facilities for the Democratic party" in accordance with "established procedures."

When the requests were rejected by all networks, Mr. Butler promptly came back with a second request "in the name of fair play." He contended the networks were morally obligated to grant the time and pointedly hinted that if he didn't get it, Congress (controlled by Democrats)

might want to change the law "to assure fair treatment to both major political parties."

At the weekend these key trends and developments were observed on the political scene:

Sen. Lyndon Johnson (D-Tex.), majority leader, introduced a bill requiring broadcasters to provide presidential and vice presidential candidates of major parties with equal facilities. It has the approval of party leaders on both sides (page 84).

Sen. Richard L. Neuberger (D-Ore.), introduced a bill for government financing of political time on radio-tv (page 84).

Radio and tv *served both as media of immediacy* and as the President's personal contact with the people as he announced willingness to run at his news conference, and as he explained why and how in a *16-minute* broadcast.

(As many as 70 million persons are estimated to have heard the President's address.)

Network's dropped huge sums as they juggled schedules on short notice to keep the nation informed of Wednesday's momentous developments.

Democratic Chairman Butler called for revision of Sec. 315 and urged newspapers to adopt the radio-tv technique of giving both sides equal chance to tell their story (page 85). That happened Wednesday noon before the hassle developed over reply time following the President's network address.

GOP Chairman Leonard W. Hall announced Thursday the party will wage an "electronic age" campaign.

Chairman Hall said the Republicans total budget for the Republican National Committee and the Congressional

committees would run about $7 million, of which $2 million will be devoted to tv and radio. He displayed charts showing proposed blanketing of all sections of the country by electronic media before the November election.

The tv shows will include several appearances by President Eisenhower but the President may also make "several quick trips" to key sections. A special organization will be set up in Chicago to handle the campaign in the farm belt. Cabinet members, except Secretary of State Dulles, will hit the campaign trail in the autumn. Mr. Hall predicted Vice President Nixon will be the President's running mate.

President Eisenhower said in his Wednesday night radio-tv address that he would not "engage in extensive traveling and in whistle-stop speaking—normally referred to as barnstorming." He said he would reach the American people "*through means of mass communication.*"

At the Wednesday morning news conference he announced his decision to stand for a second term following countless requests by newsmen for him to state his desires on the matter. Having met their request, he answered very few questions. Instead he promised to give the answers in his broadcast. Thus radio-tv were first to tell the world about his decision to stand for renomination, with word going out over network and station facilities a few seconds after the morning conference was over.

All networks, in turning down the original requests of Chairman Butler and Sen. Kefauver for reply time, couched their answers in substantially the same language to the two individuals. The letters from the networks based their refusals on two points: *they would allot equal time to contending candidates for the nomination of the*

same party, but not to a different party, as in this case; President Eisenhower's talk was carried as a matter of public interest, and similarly, significant talks by Democratic leaders would be presented.

Robert W. Sarnoff, president of NBC, wrote Mr. Butler that NBC makes its facilities available to political leaders from time to time as a matter of public interest. He said the network carried the President's address because it was "a news event of unusual national importance." He pointed out that NBC attempts to maintain "fair balance" between representatives of the major parties, and in this connection, mentioned that NBC had provided free time to Adlai Stevenson on two recent occasions.

Robert E. Kintner, president of ABC, turned down the Democratic request with this wire: "We regret to inform you it is our decision that we are neither legally nor morally obligated to allocate time . . . ABC has followed and will continue a program of baanced and full presentation of various political points of view.

In declining the requests, John B. Poor, executive vice president of Mutual, said MBS had carried the President's address as "a special news feature in the public interest." Under the circumstances, he added, there is "no obligation on the part of the network to furnish equal time."

Mr. Mickelson pointed out the policy of CBS Radio and CBS-TV "*to give equal facilities to contending candidates for the nomination of the same party.*" In accordance with this policy, he said, both Sen. Kefauver and Mr. Stevenson have been on CBS Radio and CBS-TV. He said the network attempts to "keep an overall balance between Republican and Democratic viewpoints at all times."

In his second request for time to reply to the President, Mr. Butler said: (1) *the address was political and the*

President spoke as a candidate, outlining his program; (2) his request for time was based not on legal but on moral responsibilities of networks to treat both parties the same; (3) the network denials set a precedent *"that the President can campaign free of charge from now to the convention;* (4) some network officials are asking relaxation of equal time laws on the ground they can be trusted to act fairly, *and he deems the denials unfair;* (5) if the networks persist in their position, "I feel confident" Congress will study the problem and *take steps it deems necessary to assure fair treatment;* (6) Congress intended broacasters should serve all the people, not merely the party in control of the executive branch, and (7) millions *are deprived of the right* to hear from their opposition leadership in answer to the President.

Radio and tv film coverage of the President's news conference Wednesday was speeded to broadcasters when James Hagerty, Presidential news secretary, cleared the audio and visual versions in a little over a half-hour.

NBC had Peter Hackes, newsman, on West Executive Ave. beside the Executive Office with a mobile unit. After relaying the flash, Ray Scherer, commentator, joined him with a running account of the news conference on NBC TV. Richard Harkness handled radio to New York from a microphone outside the news conference room. The *Ernie Kovac Show* on NBC-TV and *Weekday* radio program carried the flash and commentaries.

NBC-TV carried the film account of the conference starting at 12:30 p.m., claiming a beat.

CBS had Charles Von Fremd on radio and tv with a flash at 10:52 a.m., after the news conference. Eric Sevareid, Griffing Bancroft and Bill Shadel worked from the corridor. The network had Len Cautela stationed with

Adlai Stevenson at the Savoy Plaza Hotel, New York, where Mr. Stevenson heard the Von Fremd flash on a radio set. After the President's evening talk to the nation, CBS-TV carried a 40-minute series of clips and commentaries handled by Douglas Edwards.

ABC tipped off its news staff by having an open mike in the corridor outside the press room, with the opening doors and rush for telephones as a signal. Bryson Rash, John Edwards, Martin Agronsky and Edward P. Morgan gave a 17-minute account that included a switch to the Senate Radio Gallery where Richard Rendell interviewed legislators. Albert Warner supplied commentary from the studio. ABC carried the radio tape of the conference at 1 p.m., and Mr. Rash fed a filmed version when the tv network opened at 3 p.m.

ABC Radio carried a special program from 7:30-7:55 p.m. on Wednesday, covering reaction to the President's decision around the world. The program was sponsored by Harris-Upham & Co., New York investment company, through Lewin, Williams & Saylor, New York. Included were reports from Washington, Paris, London, Los Angeles, Chicago and New York.

Mutual presented a special broacast Wednesday (11:30-11:45 a.m.) in which Mutual chief correspondent Robert Hurleigh explained newsmen's reaction to the news conference. From 3:30-4 p.m. MBC broadcast a transcribed recording of the conference.

NBC and CBS *pre-empted commercial tv time to carry the President's talk*, starting at 10 p.m. ABC rearranged its tv schedule shifting its sponsored boxing bouts telecast usually carried at 10 p.m. to 10:30 p.m. EST. It was estimated that CBS-TV's cancellation of *The United States Steel Hour* (Wed., 10-11 p.m. EST alternate weeks)

would cost the network about $100,000, covering time and production costs. Cancellation of NBC-TV's *This Is Your Life* was estimated to have cost the network about $50,000.

WGMS Washington put the radio tape of the conference on the air at 11:37 a.m. via its direct line from the White House.

The Wednesday night presidential address was broadcast from his office, with only one camera used. Robert Montgomery produced, avoiding production tricks. The President spoke from lengthy notes, which he read from the desk. After the 16-minute talk he introduced Mrs. Eisenhower. At that point the program seemed to get out of hand for about a minute as the President looked around, picked up his pile of notes and spoke to the little group of intimates in the office. The Star Spangled Banner was not played.

In Washington, WRC-TV keying NBC, went directly into a commentary whereas WTOP-TV inserted a commercial before switching to Douglas Edwards.

Voice of America had a tape recorder outside the executive offices after the Wednesday news conference, interviewing the sidewalk crowd. Radio Free Europe provided extensive service from all its transmitters.

Inquiries at the FCC about liability of networks to grant reply to the Democrats brought this position: Networks would be obligated to grant time *to any other qualified candidate* for the Republican presidential nomination. The Commission referred to its question-answer political primer dated *Sept. 8, 1954.* Question 18 of the primer states the matter this way:

Q. If the station makes time available to candidates seeking the nomination of one party for a particular of-

fice, does Sec. 315 require that it make equal time available to the candidates seeking the nomination of other parties for the same office?

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of Sec. 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and therefore, insofar as Sec. 315 is concerned, "*equal opportunities*" *need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention.*

BILL WOULD AMEND 'EQUAL TIME' PROVISO

Measure introduced by Sen. Lyndon B. Johnson would change Sec. 315 (a) of Communications Act making it necessary for stations to give same amount of air time to presidential, vice presidential candidates of major parties.

A Bill which would amend Sec. 315 (a) "equal political time" provisions of the Communications Act insofar as they affect candidates for the presidency or vice presidency was introduced Tuesday by *Senate Majority Leader Lyndon B. Johnson (D-Tex.).* [At Deadline, Feb. 27].

The bill (S 3308) also revises upward the legal amount a national political committee may spend in this year's presidential election—from the present $3 million to $12.3 million. The measure would raise the legal amounts that may be spent on behalf of candidates for U. S. senator and representative.

S 3308 would leave Sec. 315 (a) unchanged as it regards all candidates except those for the presidency and vice presidency. For the latter, networks and radio-tv broadcasters would have to furnish equal time for the presidential and vice presidential candidates for the major political parties only.

The measure was co-sponsored by *25 senators, including Senate Minority Leader William Knowland* (R-Calif.) *and the Democratic and GOP whips.* It is similar to a proposal by CBS President Frank Stanon which has been introduced in the Senate and House (S 2306 and HR 6810) and on which a House subcommittee has heard testimony [B.T., Feb. 6, et seq.].

The Stanton plan, however, applies to all candidates and only to news, forum, interview, debate and similar programs, while S 3308 applies to all radio and tv programs. The Stanton plan would relieve broadcasters entirely of the "equal time" requirements on the news-type programs, while the Johnson bill provides equal time to the major party presidential and vice presidential candidates.

Provision is made for candidates of major parties other than the Democratic and Republican Parties by a requirement that any other party, to qualify for equal time with the two major parties, must have polled 4% of the votes in the last presidential election or must present a petition with names totaling 1% of the vote at the past presidential election.

The Sec. 315 (a) amendment is designed to relieve broadcasters of the requirement that they furnish equal time to candidates of small • • •

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Petitioner vs. United States of America and Federal Communications Commission, Respondents.	}	Civil Action No. 11946

MOTION (EMERGENCY) TO FILE RELEVANT AFFIDAVIT TO PRIME EXHIBIT OF PETITIONER'S PRINTED PETITION FOR REHEARING.

(Filed Mar 30 1957)

Now comes Lar Daly, Petitioner, by his Attorney, and states:

1. That on March 22, 1957, he filed his printed Petition for Rehearing with the Clerk of this Court.

2. That on March 29, 1957, Petitioner received in the United States mail the following affidavit from Charles F. Carpentier, Secretary of State of Illinois, which is hereto attached and part of this Motion.

3. That said affidavit is of extreme importance to Petitioner's Petition for Rehearing, in that Petitioner believes it sustains, beyond all doubt, that he was certified as a legally qualified candidate for President of the United States, on the Republican ticket, for the April 10, 1956, Illinois Primary Election; and that he so remained as a legally qualified candidate, uninterruptedly, from February 8, 1956, to April 10, 1956, inclusive.

4. Petitioner requests the Court that the attached affidavit be made part of his Prime Exhibit in his Petition for Rehearing, and that it be considered as a continuation

of Page 4a of the Appendix in said Petition for Rehearing.

Respectfully submitted,
/s/ Lar Daly
Petitioner

Robert A. Kahn
Attorney for Appellant
134 South La Salle Street
Chicago, Illinois
ANdover 3-2283

(Seal of the State of Illinois)

OFFICE OF THE SECRETARY OF STATE
Springfield

Charles F. Carpentier
Secretary of State

March 28, 1957

Lar J. Daly, President
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

In response to your letter of March 15, 1957, I am sending you the enclosed affidavit. Rather than using the form which you submitted, I have prepared a new affidavit, which is restricted to matters of fact and avoid conclusions of law.

Very truly yours,
(S) Charles F. Carpentier
Secretary of State

CFC:db

To Whom It May Concern

In my official capacity as Secretary of the Illinois State Electoral Board, the records relative to the filing of Primary Petitions of candidates for the President of the United States to be voted for April 10, 1956, indicate that

under date of January 23, 1956, a petition for Lar (America First) Daly was filed.

That the last day for filing primary petitions was January 23, 1956.

That the last day for candidates to withdraw their petitions was January 28.

That the State Electoral Board met pursuant to Statute on February 8, 1956, and certified to the various County Clerks in the State of Illinois, names of all candidates whose petitions were still on file including the name of Lar (America First) Daly.

That under date of February 21, 1956, a request was received from Lar (America First) Daly that his name be withdrawn and not printed on the ballots or voting machines in any Illinois County.

That under date of February 24, 1956, Lar (America First) Daly was advised that the State Electoral Board had met on February 8, 1956 and certified all names and that no provisions in the Election Laws of the State of Illinois provides for the State Electoral Board to reconvene and act upon the request for withdrawal.

(S) Charles F. Carpentier
Secretary of State
Secretary of State Electoral Board

Subscribed to and sworn to
before me this 27th day of
March, 1957.
Dorothy M. Dee
Notary Public
My Commission expires April 15, 1960
(Notary Seal)

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
Tuesday, April 2, 1957

Before
Hon. Philip J. Finnegan, Circuit Judge
Hon. H. Nathan Swaim, Circuit Judge

Lar Daly, Petitioner, No. 11946 vs. United States of America, Respondent; Federal Communications Commission, Intervenor-Respondent.	Petition for Review of an Order of the Federal Communications Commission.

It is ordered by the Court that the petition of counsel for Lar Daly, filed herein on March 22, 1957, for a rehearing of the order of this Court entered on March 7, 1957, be, and the same is hereby, Denied.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing ..... pages contain a true copy of the Petition for Review, filed December 28, 1956,

Motion to Dismiss, filed February 23, 1957,

Emergency Motion to correct Omission in Record, filed February 25, 1957,

Answer of Lar Daly, to Motion to Dismiss, filed March 4, 1957,

Order, entered March 7, 1957,

Petition for Rehearing, filed March 22, 1957.

Motion (Emergency) to file Relevant Affidavit, filed March 30, 1957, and Order, entered April 2, 1957, in

Cause No. 11946

Lar Daly, Petitioner,

vs.

United States of America, Respondent,
Federal Communications Commission,
Intervenor-Respondent.

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-third day of May A. D. 1957.

/s/ Kenneth J. Carrick
Clerk of the United States Court of Appeals for the Seventh Circuit.

Office - Supreme Court, U.S.
FILED
JUL 25 1957
JOHN T. FEY, Clerk

No. 237

In the Supreme Court of the United States

OCTOBER TERM, 1957

LAR DALY, PETITIONER

v.

UNITED STATES OF AMERICA

AND

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AND THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 237

LAR DALY, PETITIONER

v.

UNITED STATES OF AMERICA

AND

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AND THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

The facts in this case are as follows:

(1) In March 1956 petitioner asked the national radio and television networks to give him, as an alleged candidate for the Republican nomination for President, free time equal to that previously given to President Eisenhower. This request was based on Section 315 of the Communications Act of 1934, 47 U. S. C. 315, which requires that equal opportunity to use broadcasting facilities be given to all "legally qualified" candidates for public office. (2) Upon the networks' refusal to grant him such free time, petitioner requested the Commission to require the networks to do so. The Commission, by letter of April

11, 1956, rejected the request, on the ground that petitioner had failed to show that he was a "legally qualified candidate" for the nomination (Pet. App. 7a–8a).[1] (3) On October 3, 1956 petitioner again complained to the Commission about the networks' failure to give him equal time to reply to President Eisenhower, and submitted new documentation purporting to show that he had been a legally qualified candidate for the Republican Presidential nomination. On October 31, 1956 the Commission advised petitioner by letter that since the Republican Party had nominated President Eisenhower as its candidate on August 22, 1956, petitioner could no longer be considered a candidate for the nomination, and therefore was not entitled to free time under the statute (Pet. App. 9a–12a). (4) Petitioner then filed in the Court of Appeals for the Seventh Circuit a petition to review the Commission "order" of October 31, 1956 (Pet. App. 1a). The relief requested was a finding by the court that petitioner had been from February 8 to August 22, 1956 a duly qualified candidate for the Republican Presidential nomination, and a declaration that the Commission's rulings of April 11 and October 31 were "unjustified and invalid in their entirety" (Pet. App. 5a–6a). Upon motion of the United States and Federal Communications Commission, the court of appeals dismissed the petition on the ground that the

[1] On May 3, 1956 the Commission denied reconsideration of its earlier action. Petitioner did not seek judicial review of these rulings, although he did institute in the district court a suit for declaratory relief against the networks in which neither the United States nor the Commission was a party. That suit was dismissed.

case was moot (*id.* 27a–28a), and subsequently denied rehearing (*id.* 101a).

The decision below is clearly correct, and presents no question warranting review. If the Commission's decision in April 1956 that petitioner was not a legally qualified candidate was wrong, petitioner's remedy was to seek judicial review of that decision. This he did not do. The Commission action here sought to be reviewed was its refusal in October 1956 to require the networks to then grant petitioner equal time and to declare that petitioner had been a legally qualified candidate for nomination. But in October 1956, after the Republican Party had nominated its candidate, petitioner was no longer a candidate for the nomination. Petitioner apparently agrees, and does not now seek any order for "free and equal" time (Pet. 33).

The sole remedy petitioner seeks is a declaration that he *had been* a legally qualified candidate between February 8 and August 22, 1956 (Pet. 33). By October 1956 this issue was wholly academic. It did not affect any rights or status of petitioner and could have no bearing on the issue of whether at any future time he would be a legally qualified candidate. *A fortiori*, the question was academic in March 1957, four months after the election, when the court of appeals dismissed the petition for review as moot.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

JULY 1957.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 237

LAR DALY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

AND

FEDERAL COMMUNICATIONS COMMISSION,

Respondent-Intervenor.

PETITION FOR REHEARING OR, IN THE ALTERNATIVE, TO REMAND TO THE COURT OF APPEALS FOR DECISION ON THE MERITS.

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LAR DALY,

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Respondent-Intervenor.

PETITION FOR REHEARING OR, IN THE ALTERNATIVE, TO REMAND TO THE COURT OF APPEALS FOR DECISION ON THE MERITS.

Petitioner prays that this Honorable Court reconsider its order of October 14, 1957, denying Petitioner's request for certiorari, and upon reconsideration to take jurisdiction and hear this case or, in the alternative, to remand this case to the United States Court of Appeals for the Seventh Circuit for a decision on its merits.

The following are the reasons in support of this Petition:

I.

GROUNDS WHICH ARE CONFINED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT."

A. A Legal Article Written About Petitioner's Case.

A legal article about Petitioner's case entitled "Lar Daly and the Constitution" was written by Howard Newcomb Morse, Of Counsel in this Petition for Rehearing. This legal work sets forth an original theory of Constitutional Law, of magnitude in its influence and effect, bearing directly upon Petitioner's rights under the law. This legal article is incorporated herein and made an integral and substantial part hereof.

LAR DALY AND THE CONSTITUTION.

by Howard Newcomb Morse
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On March 7, 1957 a final order was handed down by the United States Court of Appeals for the Seventh Circuit dismissing the case of *Lar Daly v. United States of America and Federal Communications Commission*, in which case the petitioner sought a declaratory judgement. On April 2, 1957 a petition for a rehearing was denied. Daly was refused free and equal radio and television time as a

legally qualified candidate for President of the United States by the "Big Four" networks (the National Broadcasting Company, the Columbia Broadcasting System, the American Broadcasting Company and the Mutual Broadcasting System) and the Federal Communications Commission. He was certified as a legally qualified candidate by the duly constituted authorities of the States of Illinois, Indiana and Montana, and this fact was known to the four networks and the Federal Communications Commission before he was denied free and equal broadcast time.

Free and equal broadcast time is guaranteed by section 315 of the Communications Act of 1934, as amended, which refers specifically to "equal opportunities." It is axiomatic that for one to be deprived of said "equal opportunities" constitutes a denial of the basic freedom of equal justice under law. Due to the procrastination and dilatory tactics employed by the Federal Communications Commission, by the time Daly was given his day in court the election had passed and the Court held that his case was non-justiciable and accordingly moot.

Article I, section 4, clause 1, of the Constitution of the United States of America reads as follows: "The Times, Places and *Manner* of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing (sic) Senators." This writer will subsequently prove that the proviso following the semicolon may never be used by the Congress or any of its created federal regulatory agencies, such as the Federal Communications Commission, due to the conditions under which the States of South Carolina, New Hampshire, New York and Rhode Island and Providence Plantations ratified the Constitution of the United States.

Article II, section 1, clause 2, which provides for the choosing of Presidential electors, adopts as the arbiter of the *manner* in which Presidential electors may be chosen the same arbiter in Article I, section 4, clause 1, of the *manner* in which Senators and Representatives are chosen —the state legislatures. Since the same arbiter is employed in both provisions—the provision pertaining to the choosing of Senators and Representatives and the provision referring to the choosing of Presidential electors—after it is established that the Congress or any of its created federal regulatory agencies cannot supersede or supplant the arbiter in the former provision, by the same token the Congress or any of its created federal regulatory agencies would be estopped from legally superseding or supplanting the same arbiter in the same general sphere of activity—elections and the elective process.

As to the Court's holding that the case was non-justiciable and therefore moot, the decisions in the cases of *Van DeVegt* v. *Board of Commissioners of Larimer County*, 98 Col. 161, 177, 55 P. 2d 703, 710 (1936); *Peppers Refining Company* v. *Corporation Commission*, 198 Okl. 451-453, 179 P. 2d 899, 901 (1947); *Culver* v. *City of Warren*, 84 Ohio App. 373, 391, 392, 396, 83 N. E. 2d 82, 90, 92 (1948), and *California Company* v. *State Oil and Gas Board*, 200 Miss. 824, 845, 27 So. 2d 542, 547 (1946), all hold that a case is never moot "* * * where interests of a public character are asserted." Certainly, no one can maintain that Daly was not asserting his interests and that those interests were not of a public character.

A federal court has the legal duty incumbent upon it to recognize and follow the settled substantive law of the state in which the case before it arose. The Appellate Court of Illinois in 1944 in Appeal of *Frank Foundries Corporation*, 323 Ill. App. 594, 600, 56 N. E. 2d 649, 652, declared that: "* * * if a substantial issue or question

remains in the case, the cause is not moot." Certainly, whether the guarantee of "equal opportunities" in section 315 of the Communications Act of 1934, as amended, is merely "window dressing" and a "dead letter" remains a substantial issue or question.

Since the Court dismissed the case as moot, contrary to Illinois law and its legal obligation to recognize and follow the settled substantive law of Illinois as laid down by an Illinois appellate court, and did not decide the case on its merits, this writer would now like to summarize briefly the merits of the case. Daly was guaranteed "equal opportunities" under section 315 of the Communications Act of 1934, as amended, by virtue of being certified as a legally qualified candidate for President of the United States by the duly constituted authorities of the States of Illinois, Indiana and Montana. But he was denied said "equal opportunities" by a Congressionally-created federal regulatory agency which had both actual and constructive notice that he was a legally qualified candidate before depriving him of his rights under the law.

The question as to which sovereignty—the several states or the United States—is the arbiter as to who is a legally qualified candidate is resolved by that fact that the question as to who is a legally qualified candidate comes under the generic constitutional heading of *manner* of choosing such public officers as Senators, Representatives and Presidential electors and by the further fact that the Constitution reserves to the several states the role of arbiter of said *manner*. However, under the proviso of Article I, section 4, clause 1, the proposition might be advanced that the Congress, acting through one of its created federal regulatory agencies, could exercise its purportedly delegated prerogative to "* * * by law (section 315 of the Communications Act of 1934, as amended) make or alter" the *manner* established by state law of choosing the foregoing

public officers so as to arrogate unto the United States the role of arbiter of said *manner*. But it will be seen that the proviso was rendered nugatory as a result of the terms upon which the States of South Carolina, New Hampshire, New York and Rhode Island and Providence Plantations were admitted into the United States.

South Carolina's condition subsequent as embodied in her ratification of May 12, 1788 is in these words: "And whereas, it is essential to the preservation of the rights reserved to the several States, and the freedom of the people, under the operations of a General Government, that the right of prescribing the *manner*, time, and places of holding the elections to the Federal Legislature, should be forever inseparably annexed to the Sovereignty of the several States,—This Convention doth declare, that the same ought to remain, to all posterity, a perpetual and fundamental right in the local, exclusive of the interference of the General Government."

When South Carolina's ratifying convention passed her ratification containing this condition subsequent, all but six of the original thirteen states had previously ratified the Constitution, all without this condition subsequent. Since the seven states already members of the United States accepted South Carolina as a member, they assented to South Carolina's condition subsequent. Such assent thereupon operated so as to make South Carolina's condition subsequent apply to each and every one of the seven states as forcefully as it applied to South Carolina.

The next state to enter the United States, New Hampshire, came into the United States on the following condition subsequent as contained in her ratification of June 21, 1778: "That Congress do not exercise the powers vested in them, by the fourth section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned."

Since the eight states already members of the United States accepted New Hampshire as a member, they assented to New Hampshire's condition subsequent, which was the same type of condition subsequent which already applied to all eight. The next state to enter the United States was the Commonwealth of Virginia. After Virginia came New York. New York's condition subsequent as embodied in her ratification of July 26, 1788 is in these words: "That the Congress will not make or alter any regulation in this State, respecting the times, places, and *manner*, of holding elections for Senators or Representatives, unless the Legislature of the State shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance, be incapable of making the same; and that in those cases, such power will only be exercised until the Legislature of this State shall make provision in the premises."

Since the ten states already members of the United States, including Virginia, accepted New York as a member, they assented to New York's condition subsequent. The next state to enter the United States was North Carolina. The last of the original thirteen states to enter the United States, Rhode Island and Providence Plantations, came into the United States on the identical verbatim condition subsequent as New York's. Rhode Island's condition subsequent is contained in her ratification of May 29, 1790.

Since the twelve states already members of the United States, including North Carolina, accepted Rhode Island as a member, they assented to Rhode Island's condition subsequent.

Since each of the thirty-five states to enter the United States subsequent to the original thirteen states came into the United States on a basis of perfect equality with each of the original thirteen states, the condition subsequent applicable to the original thirteen states applies to the

remaining thirty-five states just the same as all rights and powers possessed by each of the original thirteen states are possessed in equal amounts by each of the remaining thirty-five states.

B. A "Negative Admission" by the Solicitor General.

In the "Memorandum for the United States and the Federal Communications Commission in Opposition" to Petitioner's request for certiorari, the Solicitor General of the United States, the Honorable J. Lee Rankin, on page three thereof, makes the following revelation: "If the Commission's decision in April 1956 that petitioner was not a legally qualified candidate was wrong * * *" Ordinarily such phraseology would constitute an expression of doubt and uncertainty, but when such wordage is enunciated by the officer of the Department of Justice of the United States who filed a reply in opposition to the dispensing of justice to Petitioner such phraseology can only be construed as a negative or back-handed admission of the truth of Petitioner's assertions.

C. The Dissimilarity of the Daly and Barnes Cases.

In two separate but allied cases entitled *Frank A. Barnes v. National Broadcasting Company, Inc. et al.*, No. 202 Misc., and *Frank A. Barnes v. Columbia Broadcasting System, Inc.*, No. 226 Misc., both filed at the October, 1957 Term of this Court, Barnes appeals to this Court from judgments entered by the District Court of the United States for the Northern District of Illinois dismissing his suits for damages against the two aforesaid broadcasting networks based upon their refusals to afford him free and equal radio and television broadcast time.

However, these two cases are dissimilar to Petitioner's case entitled *Lar Daly v. United States of America and*

Federal Communications Commission, No. 237, filed at the October, 1957 Term of this Court, in that, unlike Petitioner, Barnes never became "a legally qualified candidate" and never was "certified by the duly constituted authorities" of one or more sovereign States.

II.

"OTHER SUBSTANTIAL GROUNDS AVAILABLE TO PETITIONER ALTHOUGH NOT PREVIOUSLY PRESENTED."

A. Analogy of FCC "Behavior Pattern" to Deceptive Debtor.

The procrastination and dilatory tactics characteristic of the treatment accorded Petitioner by the Federal Communications Commission and the judicial rewarding of the Commission for such behavior with the holding that Petitioner's grievance had become moot is analogous to repeated assurances by a debtor to his creditor of payment, amid protestations of good faith, until the statute of limitations governing the debt has run its full course.

B. Balancing of Scales Holding Duty and Right.

Rights have to be balanced with duties, privileges with obligations, advantages with responsibilities, benefits with burdens, just as in the law of evidence every rebuttable presumption is countered with a burden of proof. Every right has to be earned by the discharge of a corresponding duty. The right of receiving "equal opportunities" (free and equal radio and television broadcast time) under section 315 of the Communications Act of 1934, as amended, is dependent upon fulfilling the duty of obtaining a certification as "a legally qualified candidate" from at least one state secretary of state. Petitioner more than discharged

his duty (he obtained certificates from three state secretaries of state), but has been flagrantly denied the right which he earned and to which he is entitled under the law.

C. Supreme Case Asserting Doctrine of Supremacy of States in Election Matters.

The several individual States of the United States are supreme in all matters pertaining to elections held within their respective borders. The *supreme* case asserting this doctrine of the *supremacy* of the States in election matters is the case of *In re Green*, 134 U. S. 377, 379, 380, decided by the *Supreme* Court of the United States in 1889.

The opinion of the Court in that case, written by Mr. Justice Gray, declared that:

> "Although the electors are appointed and act under and pursuant to the Constitution of the United States, they are no more officers or agents of the United States than are * * * the people of the States when acting as electors of representatives in Congress * * * Congress has never undertaken to interfere with the manner of appointing electors, or, where (according to the now general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election * * * but has left these matters to the control of the States."

D. Further Judicial Interpretations of the Term "Moot."

1. Petitioner's Case Is Not Moot.

The Court of Appeals of Ohio in 1953 in *Artists and Writers Association* v. *State Department of Liquor Control*, 96 Ohio App. 121, 125, 121 N. E. 2d 263, 265, stated that:

> "A question becomes 'moot' only when it is purely academic or abstract and any judgment which might be rendered thereon would in no way avail or be beneficial to any of the parties."

No reasonable man could deny that a judgment rendered on the question in the case at Bar in Petitioner's favor would be "beneficial" to him the next time he becomes a candidate for public office and "avail" to him the "equal opportunities" of which he was outrageously deprived.

The Court of Appeals of Maryland in 1943 in *United Brotherhood of Carpenters and Joiners of America, Local No. 101* v. *United Slate Tile and Composition Roofers, Damp and Waterproof Workers Association, Local No. 80,* 29 A. 2d 839, 840, declared that:

> "Inasmuch as the purpose of the writ of injunction is to prevent a nuisance or wrong, it is evident that, if it clearly appears to the court that there will not be a continuance thereof and the question has become moot, it is proper to refuse the writ."

No reasonable man could maintain in truthfulness that it could be "evident"—let alone "clearly evident"—to this Court that there will not be a repetition of the "wrong" visited upon Petitioner the next time he is a candidate for public office. In fact, it is "evident"—even "clearly evident"—from the "behavior pattern" set by the Federal Communications Commission in the instant case that the "wrong" visited upon Petitioner will be repeated the next time Petitioner, or any other citizen not a so-called "name" politician, becomes a candidate for public office.

2. Even If Petitioner's Case Is Moot, His Case Requires a Decision On Its Merits Because It Involves "Public Rights."

Even if the present case is moot (and this the Petitioner categorically denies and the contrary unqualifiedly affirms), his case requires a decision on its merits because it involves "public rights" and is "a matter of public interest."

The Supreme Court of Oklahoma in 1944 in *Payne* v. *Jones*, 193 Okl. 609, 611, 146 P. 2d 113, 116, stated that:

> "While it is a general rule in this jurisdiction, as

well as in the other jurisdictions, that the courts will not ordinarily decide moot questions, this rule applies generally to private rights, and not always as to them, but an exception is recognized in cases involving public rights."

The Supreme Court of the United States in 1947 in *United States* v. *United Mine Workers of America*, 330 U. S. 258, 91 L. Ed. 884, 913, 67 S. Ct. 677, 696, with Mr. Chief Justice Vinson as the organ of the Court, declared that: "Violations of an order are punishable as criminal contempt even though * * * the basic action has become moot."

The Supreme Court of the United States in 1911 in *Gompers* v. *Buck's Stove and Range Company*, 221 U. S. 418, 451, 55 L. Ed. 797, 810, 31 S. Ct. 492, 34 L. R. A. (N. S.) 874, 887, with Mr. Justice Lamar as the spokesman for the Court, stated that: "* * * the case * * * had become moot * * * of course without prejudice to the power and right of the court to punish for contempt by proper proceedings."

The Court of Appeals of Alabama in 1940 in *Willis* v. *Buchman*, 30 Ala. App. 33, 36, 199 So. 886, 889, declared that:

> "We believe it is the law * * * that 'as appellate courts do not sit to give opinions on moot questions or abstract propositions, the appeal or writ of error will be dismissed where no actual controversy exists between the parties at the time of the hearing, *unless the question involved is a matter of public interest*'." (The emphasized words were put in Italics by the Court of Appeals of Alabama.)

CONCLUSION.

For the foregoing reasons, Petitioner respectfully requests and urges this Honorable Court to grant certiorari or, in the alternative, to remand this case to the United States Court of Appeals for the Seventh Circuit for a decision on its merits.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

We hereby certify that the foregoing petition for rehearing "is presented in good faith and not for delay." We hereby further certify that the foregoing petition for rehearing "is restricted to the grounds * * * specified" in Rule 58, par. 2, of the Revised Rules of the Supreme Court of the United States.

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